Public Utilities

FORTNIGHTLY

Volume XLIV No. 6 September 15, 1949

HOW TO BALANCE THE REPEAL OF WARTIME EXCISE TAXES
By the Honorable Noah M. Mason
United States Representative

« »

Higher Taxes Mean Higher Rates
By Sidney P. Allen

« »

The REA Capital Credits Program
By Franklin J. Tobey, Jr.

« »

What the State Commissioners Are Thinking About

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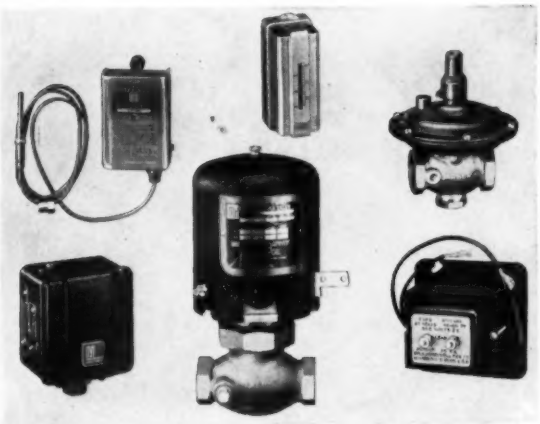

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Public Utilities FORTNIGHTLY

VOLUME XLIV SEPTEMBER 15, 1949 NUMBER 6

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PUBLIC UTILITIES FORTNIGHTLY . . stands for Federal and state regulation of both privately owned and operated utilities and publicly owned and operated utilities, on a fair and nondiscriminatory basis; for nondiscriminatory administration of laws; for equitable and nondiscriminatory taxation; and, in general—for the perpetuation of the free enterprise system. It is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.

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Pages with the Editors

MEMBERS of the 81st Congress, sweating out the long summer session in Washington, complain that no day passes without bringing a flood of complaints in the mail against high wartime excise taxes. Some of these are inspired by special interests. Night-club owners, furriers, and other perfectly legitimate business interests handling luxury items subject to the 20 per cent tax say it is wrecking them.

BUT a good many of these complaints come from the consumers. Housewives, who haven't had a fur coat since the thirties, are tired of listening to their husbands' annual excuses about waiting until the 20 per cent tax is repealed. They want some action, in the form of new coats. People whose business necessitates traveling by train, plane, or bus, and people who have to make a good many long-distance telephone calls or send a good many telegraph messages, are taking the same strident note. Even an act of Congress cannot convince the modern working girl that ordinary lipsticks and face powder are anything else but everyday necessities.

THESE letters point out truthfully, that the war has been over for more than four years but the wartime taxes linger on. No wonder one witty Congressman has nicknamed the excise "the hangover tax." Congressmen are finding it increasingly difficult to explain why these taxes (which were enacted on the wartime argument that the nation had to cut down the unnecessary use of scarce materials and services) must still linger on, in a seller's market which witnesses manufacturers wringing their hands because of sales resistance — a resistance firmly cushioned on the high tax.

PUBLIC utility commissioners, at their recent national convention at Cleveland, gave featured billing to the complaints over the excise taxes on utility services. Speaker after speaker pointed out that utility taxes are becoming more and more a basis for increased rates and that the government is collecting more revenue out of the utility business these days than even the owners.

NOAH M. MASON

BUT the Treasury grimly points to a mounting deficit in the operations of the Federal government. Administration experts say that, under these conditions, tax repeal is not in the cards. Uncle Sam will need every dollar he can collect, at the present tax rates. Still, he will fall far short of balancing his budget for this year.

How wonderful it would be, therefore, if someone would spring up with a magic formula by which excise taxes could be repealed without a loss of Federal tax collections. The author of the opening article in this issue does not claim to be a magician. But he does advance a very simple and understandable method by which, he thinks, the repeal of wartime excise taxes on necessary utility items at least could be offset by another repeal. Furthermore, that other repeal would be in the nature of a much-needed and overdue tax reform. The reference is to the exemption from Federal income tax now enjoyed by so-called nonprofit coöperatives which are permitted to refund earn-

ings to their members or otherwise to retain such earned benefits.

REPRESENTATIVE NOAH M. MASON, author of this article, was born in Wales in 1882 and was brought to the United States in his early childhood. He was educated in Illinois, graduating from the Illinois State Normal University with the degree of bachelor of education in 1925. CONGRESSMAN MASON also did graduate work in social science, studying taxation, government, and labor problems. He served thirty-three years as a teacher, and was the principal of a grade school and the superintendent of schools at Oglesby, Illinois. He was elected to the Illinois senate in 1930 and served until 1936. He was elected as Republican Representative from the fifteenth district of Illinois to the 75th Congress and each succeeding Congress.

* * * *

FOLLOWING through this theme that higher taxes on utilities mean higher rates, we also publish, in this issue, an article on that subject (beginning on page 342) by SIDNEY P. ALLEN, chief editorial writer of the *San Francisco Chronicle*. MR. ALLEN has made a special study of public utility operations on the West coast, including gas, electric, and telephone enterprises. A graduate of Stanford University, MR. ALLEN has been with the *Chronicle* since 1933. He was appointed financial editor in 1940 and during the war served with the Office of War Information in Washington, D. C. He is a regular observer at annual conventions of the American Bankers Association and other financial and business gatherings.

* * * *

SEVERAL years ago the Federal REA brought forth the "Capital Credits Plan" whereby REA co-op members agree among themselves that any payment above the cost of service shall be regarded as capital furnished by the member customers to the co-op. The co-op credits such patronage capital on its books for eventual return. Beginning on page 349 is an analysis by FRANKLIN J. TOBEY, JR., of the FORTNIGHTLY editorial staff, of the Capital Credits Plan and its purpose, apparent and otherwise.

SIDNEY P. ALLEN

THE recent annual convention of the National Association of Railroad and Utilities Commissioners in Cleveland brought forth a number of important reports and pronouncements on various problems of public utility regulation. Thoughts and comments of these commissioners naturally constitute informative reading for all interested in public utilities. Beginning on page 372 we present a selection of the most thought-provoking excerpts, in actual text, taken from the addresses and committee reports of the Cleveland meeting. All those concerned with utility operations will find these comments of special interest.

* * * *

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

THE New York commission holds that it may not direct a gas and electric company to supply gas service at less than cost, even though it may sympathize with consumers feeling the sudden impact of higher gas rates after a long period of no increase. (See page 123.)

THE next number of this magazine will be out September 29th.

The Editors

Coming IN THE NEXT ISSUE

★

CRISIS IN TRANSIT

Transit companies in a number of American cities are becoming more and more concerned over the possibility that increased fares may be reaching an economically "diminishing point of return." With the high postwar production of automobiles placing more private cars on the streets every day, transit operators are worried about patronage resistance to fare increases which are required to offset the rapid rise in operating expenses. Here is an article by George W. Keith about the local company in Cincinnati which decided to take a chance on voluntarily foregoing a fare increase to which it was admittedly entitled under the terms of its service-at-cost contract with the city.

BUSINESSMEN ARE URGED TO AID TRANSIT

Among the factors contributing to inferior service are excessive abortive peak loads, decentralization of population, curb parking, and lack of adequate community support for service improvements. Herbert Bratter, Washington writer of business articles, also discusses the responsibility for trend towards socialization in the transit industry.

POSTWAR TRANSIT PROGRESS

Justus F. Craemer, retiring president of the National Association of Railroad and Utilities Commissioners, gives us an analysis of current trends and economic problems in the transit industry from the standpoint of an experienced regulatory authority.

MUSIC IN TRANSIT

What is the public reaction to the spreading practice of equipping streetcars and busses with FM radio receivers for programs enroute? Puzzled over conflicting statements one transit company decided to find out via a public opinion survey. John J. Hassett has written an account of the steps taken by this company to check on the popularity of these musical and news programs with the transit companies.

★

Also . . . ***Special financial news, digests, and interpretations of court and commission decisions, general news happenings, reviews, Washington gossip, and other features of interest to public utility regulators, companies, executives, financial experts, employees, investors, and others.***

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

WINSTON CHURCHILL
Former Prime Minister of England.

"We must think and plan and toil, not only as patriots in our own countries, but as Europeans, if we are not to be paupers or slaves."

ROBERT B. McCALL
President, American Locomotive Company.

"The damning fact is that nationalization shows no evidence of having a strong, good effect . . . [and is] essentially for the desperate—a form of receivership."

RALPH BUDD
President, Chicago, Burlington & Quincy Railroad.

"Railroad finances have become a political question rather than one of finance or operations. If private ownership ever ends, it will be because government has made its continuance impossible."

IRA MOSHER
Chairman, finance committee, National Association of Manufacturers.

"As a matter of principle it seems clear that monopolistic practices in restraint of trade are inherently contrary to the public interest, and should be prohibited to labor unions, as well as to employers."

EDITORIAL STATEMENT
The Journal of Commerce.

"Organized labor constitutes the greatest and most powerful monopoly this nation has ever seen. Organized labor as it is constituted in this nation could not exist without special exemption from antitrust laws."

DONALD B. LOURIE
President, Quaker Oats Company.

"No method has yet been discovered by which any community or group gets something for nothing. As we increase our governmental expenditures we greatly add to administrative costs, not to mention the colossal waste that goes with it."

FRANK CARLSON
Governor of Kansas.

"Even a casual study of history will reveal many examples of the decline of nations where excessive taxation and regimentation have sapped the energy and endeavor of the productive elements of society. Without the incentive for just reward for honest endeavor there can be no true progress."

GWILYM A. PRICE
President, Westinghouse Electric Corporation.

"Capital expansion since the war—and it has been the greatest expansion in our peacetime history—has been financed up to now almost entirely out of industry's own funds and by borrowing. Both of these reservoirs are running low, and we must look to venture capital to keep the wheels turning."

BENSON FORD
Vice president and general manager, Ford-Lincoln-Mercury Division, Ford Motor Company.

"Progress is always unfinished in America."

FRED A. HARTLEY, JR.
President, Tool Owners Union, Incorporated.

"The theory that large-scale unemployment can be prevented and high-level employment maintained by government spending of money taken away from the people by taxes is dead wrong. Every fact denies its validity."

EDITORIAL STATEMENT
The Wall Street Journal.

"The government's easy money policy and its adjunct, Federal Reserve support of the government bonds market, have indeed saved the taxpayers a little something in interest charges. It is without doubt the costliest saving a government ever made."

RALPH E. FLANDERS
U. S. Senator from Vermont.

"I think we do have a breathing spell. I earnestly hope business will use it to generate a little optimism. Otherwise it is liable to go too far the other way, and we could get all sorts of deficit financing. It would be a shame to start deficit financing on the little lull we have here."

L. R. BOULWARE
Vice president, General Electric Company.

"There is no royal road to our learning how to live together, how to work together, and how each may be sure he is conscienciously doing his part and fairly getting his share in return. Certainly the right road is not in the direction of force but of education, both economic and moral."

DEAN H. MITCHELL
President, Northern Indiana Public Service Company.

"The economic and social problems involved in social security are varied and complex. Sound solutions will be found only if the most careful thought is applied and wise judgment exercised. Businessmen throughout our country can provide a very necessary constructive leadership in this regard."

W. RANDOLPH BURGESS
Chairman, executive committee, National City Bank.

"It needs no clairvoyance to see that one of the greatest obstacles to productivity in the United States is the present tax system. It penalizes extra effort and removes incentive for going the extra mile. In wartime, high tax rates could not be avoided; in peacetime they are destructive and repressive and should be reduced, as rapidly as is consistent with sound fiscal policy."

EARL O. SHREVE
Former president, Chamber of Commerce of the United States.

"With the pressure of our foreign commitments, the increased diversion of man power and other resources to government activities, and our universal pressure for higher real income for everybody, we must never overlook the fact that any system which places a premium on payments for not working, no matter by what means, works in the direction of lower standards of living."

CONTRA COSTA STEAM PLANT

PACIFIC GAS AND ELECTRIC COMPANY

THE C-E Unit shown here is one of six such units now in process of fabrication for the Contra Costa Steam Plant of the Pacific Gas & Electric Company. This is a new plant, located near Antioch, California.

Each of the units is designed to produce at maximum rating 550,000 lb of steam per hr at 1405 psi and 950 F.

These units are of the radiant type with 3-stage superheaters and finned tube economizers in the last pass. Regenerative type air heaters follow the economizer surface.

The furnaces are completely water cooled, using closely spaced plain tubes, and are of the basket-bottom type.

Initially these units will be fired by oil or gas, but the design contemplates the possible future use of pulverized coal if desired. 8-330A

COMBUSTION ENGINEERING—SUPERHEATER, INC.

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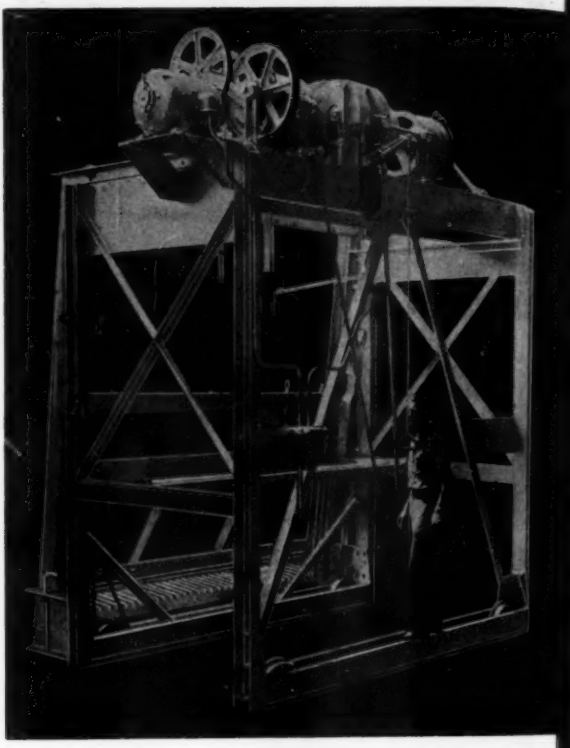
ALL TYPES OF BOILERS, FURNACES, PULVERIZED FUEL SYSTEMS AND STOKERS; ALSO SUPERHEATERS, ECONOMIZERS AND AIR HEATERS

NEWPORT NEWS MECHANICAL RACK RAKE



***WATER** users troubled with trash are invited to write for new descriptive rack rake catalog.*

THE Newport News Mechanical Rack Rake is a power-operated rake for cleaning trash racks at water intakes for hydroelectric plants, steam plants, pumping stations, canals and similar installations. It cleans the rack bars of trash and reduces a former major hand operation to one of minor periodic activity. With Newport News Mechanical Rack Rake installations, one man per shift can, under ordinary conditions, keep the racks clean for a dozen bays.

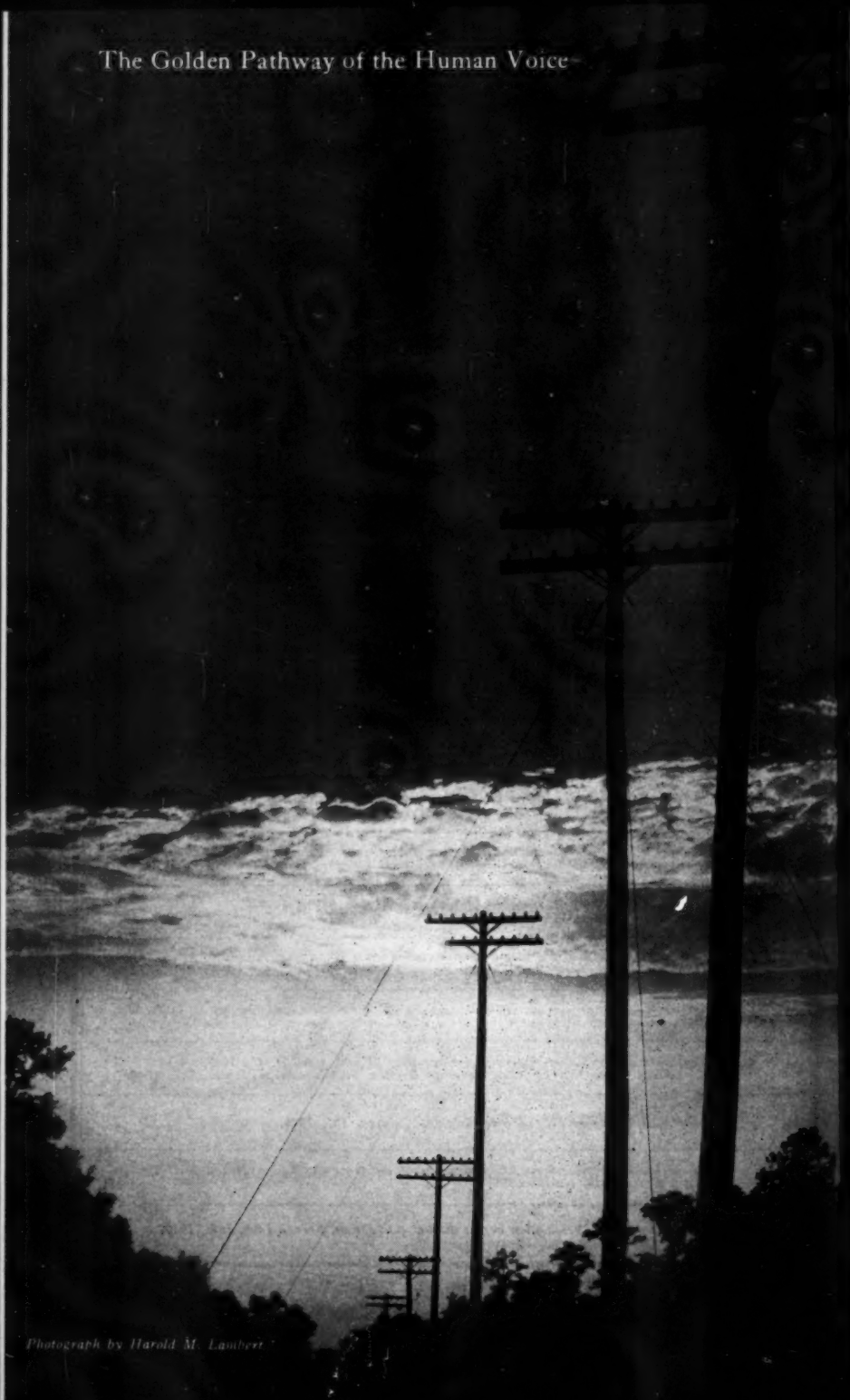
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY

NEWPORT NEWS, VIRGINIA

Utilities Almanack

September

15	Th	¶ *U. S. Radio Manufacturers Association and Canadian Radio Manufacturers Association begin joint board meeting, White Sulphur Springs, W. Va., 1949.*
16	F	¶ *Instrument Society of America ends annual convention, St. Louis, Mo., 1949.*
17	Sa	¶ *Public Utilities Association of the Virginias ends annual meeting, White Sulphur Springs, W. Va., 1949*
18	S	¶ *American Chemical Society begins national meeting, Atlantic City, N. J., 1949.*
19	M	¶ *Illuminating Engineering Society begins conference, French Lick, Ind., 1949.* ¶ *National Butane-Propane Association begins meeting, St. Louis, Mo., 1949.*
20	Tu	¶ *Southeastern Electric Exchange, Engineering and Operating Section, ends annual conference, Roanoke, Va., 1949.*
21	W	¶ *Public Works Congress and Equipment Show begins, Kansas City, Kan., 1949.* ¶ *Pennsylvania Electric Association ends annual meeting, Philadelphia, Pa., 1949.*
22	Th	¶ *Wisconsin Utilities Association, Accounting Section, begins annual convention, Lake Delton, Wis., 1949.*
23	F	¶ *Michigan Independent Telephone Association ends convention, Lansing, Mich., 1949.* ¶ *Rocky Mountain Telephone Association ends convention, Salt Lake City, Utah, 1949.*
24	Sa	¶ *American Transit Association will hold annual convention, Atlantic City, N. J., Oct. 2–6, 1949.*
25	S	¶ *Institute of Traffic Engineers begins meeting, Washington, D. C., 1949.* ¶ *American Water Works Assn., Missouri Section, begins meeting, Joplin, Mo., 1949.*
26	M	¶ *National Electronics Conference begins, Chicago, Ill., 1949.*
27	Tu	¶ *Association of American Railroads, Communications Section, begins annual convention, Portsmouth, N. H., 1949.*
28	W	¶ *Indiana Electric Association begins annual convention, French Lick, Ind., 1949.*



Photograph by Harold M. Lambert

Public Utilities
FORTNIGHTLY

VOL. XLIV, No. 6 SEPTEMBER 15, 1949

How to Balance the Repeal of Wartime Excise Taxes

The Federal government is still collecting excise taxes at the high wartime level of an extra billion a year, consisting largely of extra taxes on such essential utility services as monthly telephone bills, long-distance calls, and telegrams, train, plane, and passenger fares, as well as special levies on electric bulbs and other appliances. Representative Noah M. Mason, author of this article, suggests a way the repeal of such discriminatory taxes could be offset by the removal of another form of discrimination which bears on the electric industry—the removal of Federal tax exemption now enjoyed by REA and other coöperatives and nonprofit agencies engaged in business and commercial operations competing with tax-paying enterprise.

BY THE HONORABLE NOAH M. MASON*
U. S. REPRESENTATIVE FROM ILLINOIS

THE U. S. Bureau of Internal Revenue is out after illegal tax dodgers. Hundreds of additional agents are poring over books, questioning suspected shortchangers, and investigating income tax returns so that Uncle Sam will get the last penny due to him under the income tax laws passed by Congress and the rules laid down by the Collector of Internal Revenue.

This is as it should be. Every citizen should pay his fair share of taxation. Only spongers and sharks and shysters and tricksters try to dodge their fair share of taxation by illegal devices.

But what is fair about certain regu-

*Member of the House Ways and Means Committee. For additional personal note, see "Pages with the Editors."

lations sponsored by the Treasury Department and, in effect, indorsed by Congress through the years? That is the $64 question in tax circles and in business and corporate circles these days.

Back when the American Constitution was being debated up and down the land, James Madison wrote in *The Federalist* some very pertinent thoughts on government and taxation.

"A nation cannot long exist without revenues," he asserted. "Destitute of this essential support, it must resign its independence, and sink into the degraded condition of a province. This is an extremity to which no government will of choice accede. Revenue, therefore, *must* be had at all events. In this country, if the principal part be not drawn from commerce, it must fall with oppressive weight upon land . . . The wants of the government can never obtain an adequate supply, unless *all* the sources of revenue are open to its demands . . ."

It has been a long time since Madison expressed these thoughts, but the government, despite his earliest warning, has wandered away from the precepts he—and others of our founding fathers—laid down for us. It is still true that "the wants of the government can never obtain an adequate supply, unless *all* the sources of revenue are open to its demands," and, we might add, that they are open on an equitable basis.

A CORPORATION knows how to arrive at its tax bill, by and large, through the use of accountants. The corporation pays what is due, laying aside the money each month through thick and thin. The same is true of individuals, of partnerships, of privately managed companies, and of virtually 90 per cent of the enterprises of America.

But certain other groups, which operate the same kinds of businesses as corporations, partnerships, and privately managed companies, do business on the same streets and in the same suburbs and in the same towns with the privately owned and operated businesses, do *not* have to pay similar taxes.

They are the favored among us. They are the *nouveaux riches*, made so by the favoritism of the bureaucrats. They are the groups whose members are getting away with perfectly legal tax avoidance, because Uncle Sam himself not only condones the practice but actually encourages it as a matter of policy.

This is a strange thing and well worth meditation by every citizen who is interested in his government if only because of the oddities his studies unfold.

Members of these groups are not crooks. They are not shysters. They are not trying in any clandestine manner to dodge paying their fair share of taxes. They come right out in the open —or most of them do—and demand the privilege of paying fewer taxes than their competitors. What's more, they get away with it. They employ trained accountants, who know how to compute figures down to the last farthing, so as to arrive at the return they must make under present interpretations and rulings of the Commissioner of Internal Revenue. What I say is no reflection on the integrity or the civic morality of these groups, or on any member of these groups personally. They are doing what they can, legally, to pay as few taxes as is possible. Who

among us would do otherwise, if we had a choice?

YET, the net result of all this is that you and I, and the millions of other Americans, pay *more* taxes because of the existence of these favored groups. We have let these favored groups have their way year after year. We do not petition our Congressmen, or write to the Treasury, demanding that *all* citizens engaged in similar pursuits be taxed on the same basis. We allow the injustice to go on year after year, compounding itself and the fiscal and economic troubles it causes, directly and indirectly.

In consequence, these favored groups enjoy a stronger and stronger position in our society. Naturally, they grow economically more powerful every day. Their number is increasing all the time, because more and more people are learning that they, too, by simple legal formula of organization, can get on the gravy train. We plain citizens, on the other hand, suffer the penalties of our own inertia due to our apparent lack of consciousness about this matter. *Somebody* has to pay the $40 billion or more collected in taxes each year by Uncle Sam. It stands to reason that if some groups pay less than their fair share, then other groups are going to have to pay more than their fair share. In this case, a relatively small portion of the population is paying less. Therefore, millions of us are paying more.

If enough Americans could be informed of their stake in this situation, it would not take long to correct it. They need only let their Congressman know clearly that they, the millions of Americans, want the situation changed. And it would be changed. After all, while Congress tries to represent all of us, actually Congress responds to those of us who are aware and informed voters. Congress has failed to act on this problem through no dereliction of its own. It is because an informed, aware, voting segment of the population has not seen fit to make known its wishes, one way or another, in sufficient strengths. The people of my district are fairly well aware of this situation; and they are standing behind me, for the most part, in my efforts to change the law as it stands today.

MY theme in Congress, in recent months, has been a rather simple one, but, if repeated often enough and in enough places, it could be most effective in bringing about a needed income tax reform. *This reform would not increase the rates of taxation at all.* Yet, it would bring to the Federal Treasury at least one billion dollars more annually, and likely much more than that in the years to come. My theme has been: "Let's tax the untaxed to ease the tax load upon the overtaxed."

The number of business enterprises in operation in the United States whose owners pay no taxes, or very little

"IT *is still true that 'the wants of the government can never obtain an adequate supply, unless* ALL *the sources of revenue are open to its demands,' and, we might add, that they are open on an equitable basis.*"

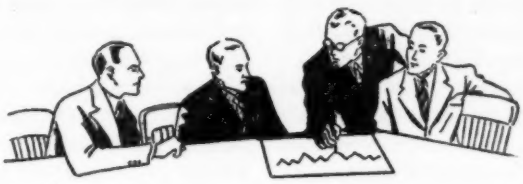
taxes, on the income of the businesses has become shameful and alarming. The number continues to grow at a rate that threatens to undermine our American economy. Scarcely a week goes by that the U. S. Treasury does not suffer new losses as more and more companies are acquired by tax-exempt institutions, foundations, or coöperatives of various kinds and thus become members of the constantly lengthening roll of legal tax dodgers.

At least half a dozen major classifications of business and industry in the United States today count Federal income tax exemption as one of the surest ways of making money, and keeping it for further investment. Several government agencies assign large numbers of their employees to spend a lot of their time teaching Americans how to dodge taxation, in one way or another.

As an illustration let us consider four specific instances that have come to my attention recently. These are not unusual examples. They are representative of the shift from the rôle of taxpayer, to that of tax-exempt legal tax dodger, on the part of thousands upon thousands of similar business enterprises in existence at the very time the Treasury's tax receipts are falling off. This comes at a time when the necessity for imposition of new and higher taxes on individuals and corporations becomes constantly greater.

Case No. 1 concerns the horse-racing track at Churchill Downs, in Louisville, Kentucky. Heretofore a payer of income taxes to the Federal government, the Derby track has been taken over by what is called the Churchill Downs Foundation, a tax-exempt organization. The earnings of the race track now will go, in part, to the University of Louisville, which is exempt also from payment of income taxes. The $40,000 income tax annually collected by Uncle Sam from this track no longer will be collected by the Treasury. The sum now will have to be made up by collections from the remainder of the population—you and I and millions of Americans who are not owners or members of foundations, co-ops, or any other kind of tax-exempt organization.

To my knowledge, this is the first time a college ever has gone into the horse-racing business. It is, however, by no means an unusual experience for a tax-exempt educational institution to compete in business ventures with tax-paying companies. The University of Michigan, for example, operates the airport at Willow Run, Michigan; New York University owns the Ramsay Piston Ring Company in St. Louis, Missouri, the C. F. Mueller Macaroni Company in New Jersey, a pottery plant in Ohio, and other factories whose profits it obtains without paying a thin dime to the Federal government in taxes. Even the Treasury Department has become agitated enough by this evasion to bring action against the macaroni company to force it to continue paying income taxes. But the Treasury Department may find that it has been caught in a dilemma of its own creation. It has encouraged these loopholes through the years by special rulings exempting this or that business from income taxation, because of its so-called "nonprofit" status. Now it is trying desperately to stop similar companies operated by similar institutions and groups from taking ad-



The Unknowing Victims of Tax Sponging

"IT stands to reason that if some groups pay less than their fair share, then other groups are going to have to pay more than their fair share. In this case, a relatively small portion of the population is paying less. Therefore, millions of us are paying more."

vantage of these very same loopholes.

EXAMPLE No. 2 involves the overly generous remission of income taxes to companies that move their plants to our island possession, the territory of Puerto Rico. Ever since Puerto Rico came under our control, following the Spanish-American War, we have given to the island's industrial development association all of the tax money collected from the buyers of Puerto Rican rum. Under an industrial tax-exemption act approved May 13, 1948, by the Puerto Rican legislature, governmental generosity went to even greater lengths. Now our government says, in effect, to any company or enterprise which wishes to move to Puerto Rico: "Depart with our blessing. We shall collect no income tax from you after 1949."

Textron, the New England textile empire whose extraordinary financial manipulations and generous loans from the Reconstruction Finance Corporation were investigated by a subcommittee of the U. S. Senate last fall, already has moved one plant to Puerto Rico. The Department of the Interior admits that other companies have moved, but it has not revealed how many such enterprises it has induced and encouraged to become legal tax dodgers.

It is now rumored in the trade that a nationally important manufacturer of summer-wear clothing, now located in Maine, is considering seriously the prospects of transferring one of its presently tax-paying mills to this tax-free paradise. An increase in the income tax rates of this manufacturer's competitors, no doubt, would be used to make up the loss to the Treasury.

EXAMPLE No. 3 involves the activities of the national leaders of the Rural Electrification Administration. The REA was set up to make loans to qualified groups of farmers to help them to attain the benefits of cheap electrical service in places in which it would not be economical for private companies to serve. The REA was going along all right and a lot of the money it had lent to such coöperative farm groups was being repaid. In fact, the money was being repaid so fast that

some coöperative farm groups began to consider the sale of their facilities to private companies at fair prices, thus causing the Federal government to obtain a tax return on the income of these companies. Several actually did so. Naturally, the REA officials do not want anything like this to come to pass. It is too revolutionary, too fair, too much like a return to free, tax-paying, private enterprise.

So REA officials evolved the so-called "Capital Credits Plan," which they are trying very strenuously to sell to various REA co-ops throughout the country. The plan, in essence, is designed not only to keep the co-ops frozen into the coöperative form of organization, but also to plow earnings into the capital structure in such a way as to insure the coöperatives Federal tax-exemption privileges in perpetuity. This plan, by mutual covenant, imposes on co-op members the necessity for continuing a coöperative, tax-free form of organization in advance as well as following the liquidation of any Federal REA loans.

Because late-comer and eleventh-hour members of a typical co-op could amass capital credits under the plan just as quickly, if not quicker, than the original founders, the plan is designed to build up resistance against the coöperative ever liquidating its assets by selling out to private companies or reorganizing under its own power into a private tax-paying stock corporation.

I AM concerned with this incongruity of our government thus attempting to keep its citizens in debt through Federal loans. But I am even more concerned, at this time, over the fact that bureaucrats are out working trying to keep more groups of citizens from ever paying their fair share of the Federal tax burden. I firmly believe that many of our good citizens who take part in these programs do not fully understand that they are attempting to get a free ride at the expense of their brother, cousin, or other relatives who happen to live in the city, or town, and who do not get the same tax-free electric power obtained by their country cousins.

Case No. 4 is the proposal of 800 independent oil jobbers of the state of Iowa to reorganize their state association on a coöperative basis for the express purpose of avoiding payment of Federal income taxes. Like the other instances I have quoted, this case presents no especially unusual features. The Iowa oil jobbers merely will adopt the philosophy of their coöperative competitors and will operate under the same rules and regulations that have favored these coöperatives so greatly.

Not long ago, the following news story appeared on page 1 of the Des Moines, Iowa, *Sunday Register:*

"A statewide jobbers' coöperative, organized so that it will be exempt from corporation taxes, will be set up by the Iowa Independent Oil Jobbers Association. It is expected that six to eight months will be needed to make this change.

"A major shift in strategic tactics was apparent in the announcement to swing to the coöperative plan.

"FOR many years, the independent oil jobbers have been among the leaders demanding that Congress change Federal income tax laws so that coöperative dividends would be taxed against the co-ops.

"Decision to form the organization, to be known as the Iowa Petroleum Coöperative Association, was reached at a board of directors' meeting last week.

"'The jobbers' association will be the parent group. The articles of incorporation and bylaws of the association will be changed by incorporating into them the provisions which now give coöperatives tax exemptions,' said J. A. Dennis, of Des Moines, association secretary. . . .

"'The independent businessman,' Dennis said, 'has fought for tax equality, and on the other hand the co-ops and the privileged groups have fought to maintain their tax exemptions. For several years these privileged groups, because of their tax exemptions and subsidies, have seen fit to engage in nearly all lines of business.

"'Now the time has come when anyone in competition with such privileged groups is unable to compete with them unless he is afforded the same privileges.

"'We speak now for the independent oil jobbers of Iowa, because in the petroleum business the co-ops and the Farm Bureau have expanded to the extent that we can no longer ignore their existence.

"'In order to compete in this field, it becomes necessary for the independent jobber to face the issue and do something about it.

"'The independent oil jobber has heretofore paid his full share of the national tax burden, while his competitors, through the exemption, have been able to expand by buying production, refineries, and pipelines. They have a big advantage, so regardless of our thinking in the past, we must meet the issue head on. . . .

"'The approximately 800 independent oil jobbers in Iowa are in competition with about 130 separate units operated by the Farm Bureau and other coöperatives.

"'All oil jobbers in Iowa are invited to participate in the plan and association membership is a requirement,' Dennis said. He added that 'a statewide meeting to explain the plan will be called.' "

LET me repeat, these instances of tax avoidance are well within the letter of the law. Whether they violate the spirit of the law is open to question. I can hardly believe that the founding fathers, in writing that educational institutions should be free from tax on their land and buildings, expected that these schools would run factories, profit from a race track's parimutuel machines, and engage in other commercial activities competing with other tax-paying businesses and industries.

Only a few weeks ago, Wittenberg College, of Springfield, Ohio, bought for $200,000 the land and building of a supermarket in a so-called sale and lease-back deal which will profit both the college and the market and will

¶ "THE *government itself does hundreds of millions of dollars of business in direct competition with tax-paying companies —and pays no comparable tax on earnings or interest on borrowed tax funds commensurate to what average individuals must pay on the money they borrow.*"

leave Uncle Sam and the taxpayers holding the bag. No income tax need be paid on the rent that the college will collect.

Hundreds of millions of dollars' worth of such sale and lease-back deals have been made in the past year. Department stores, mail-order houses, and gas station companies have sold to educational and charitable institutions on a lease-back arrangement—and tax exemption has been the motivating force behind every sale. This loophole should be closed; it is providing another means of tax evasion; it is curtailing still further the revenues of the United States Treasury.

The government itself does hundreds of millions of dollars of business in direct competition with tax-paying companies—and pays no comparable tax on earnings or interest on borrowed tax funds commensurate to what average individuals must pay on the money they borrow.

WHY, we might well ask, should not these government-owned enterprises pay income tax on earnings derived from operating barge lines, distilling rum, making and distributing electric power, selling fertilizer, running tourist camps and towns, as well as carrying on hundreds of other functions that directly compete with private business? It is the opinion of at least part of the members of the Hoover Commission that such enterprises should be taxed fully, just as all other similar enterprises which are owned by individuals. Otherwise there is discrimination against the privately owned businesses. The government needs the money—and other businesses desperately need relief from this form of unfair and unwarranted competition.

Finally, there are coöperatives which now are doing more than $17 billion of business a year, earning in profits $2 billion or more each year. These co-ops, for the most part, are paying little or nothing in taxes to the government that fosters and protects them. Some of these co-ops are wholly exempt from income tax, under the provisions of § 101 (12) of the Internal Revenue Code, while others are exempt from virtually all but nominal income taxes under Treasury rulings of great liberality to them.

Patrons of city coöperatives are wholly exempt from taxes on their patronage dividends. Patrons of farmer co-ops are supposed to pay taxes on their receipts, but the Treasury makes little effort to collect.

LITTLE business and big business—in fact, all private businessmen, plus every individual who pays income taxes—suffer from the unfair, tax-free competition of these coöperatives. Government is losing a substantial amount of revenue that is needed today to pay bills and benefits. And recent decisions of the highest courts indicate that nothing stands in the way of collecting this additional revenue except legislative action by the Congress.

I have introduced legislation (HR 5064) which seeks to impose upon the commercial earnings of tax-exempt organizations, co-ops, and other groups the same income tax rates now paid by their private business competitors. This seems to me to be fair, equitable, and in the American spirit.

Conservative estimates show that the following increased Treasury receipts each year could be expected, if

the legislation I have introduced were to be adopted:

From unions and other mutual organizations	$626,000,000
From coöperatives and other organizations	14,000,000
From nonprofit institutional organizations	173,000,000
From government-owned business and industries	267,000,000
	$1,080,000,000

On numerous occasions during the first half of 1949, President Truman called on Congress to increase the income tax on corporations to raise an additional $4 billion of revenue. Up to now, the Congress has turned a deaf ear to the President—rightly, I believe, because business is in no condition to stand so heavy an increase and a serious economic dip might result inevitably from such an imposition.

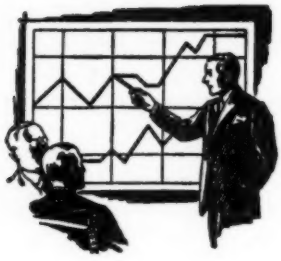
Many Congressmen have been timid about urging, or voting for, legislation that would put co-ops and other tax-exempt organizations on the same basis in the income tax field as all other businesses and industries. I was threatened several years ago with "utter defeat" if I were to take a stand on taxing coöperatives, since there are coöperatives with thousands of members in my district.

But I took my stand in favor of fair treatment for all. The co-op leaders themselves, after I had explained my position fully, concurred with me that their organizations should bear the same taxation, on the same earnings, as private businesses and industries. They could see how they, as co-op members, were getting away with legal tax avoidance at the expense of their members, who paid full taxes, and at the expense of taxpayers throughout the nation.

For the general public which patronizes our heavily taxed communications and transportation services, there is special food for thought in my tax reform proposal. The public is still paying the high wartime excise taxes at the rate of 25 per cent on long-distance calls and telegrams, 15 per cent on monthly telephone bills, and 15 per cent on train, plane, and bus passenger fares, not to mention miscellaneous utility appliance excises. The war has been over for four years, in fact, but these taxes are still being exacted. They could be repealed without a penny loss to the Treasury, if at the same time Congress decided to offset such well-deserved tax repeal with equally much needed tax reform along the lines already discussed.

The political results of a congressional decision to tax co-ops on a parity with all other groups would not cause the repercussions so many persons have been led to believe. The American people know when they are being taken for an economic ride—or, at least, they can recognize favoritism if the picture is drawn clearly.

I believe the average American wants every organization to pay its fair share of the huge tax load which is weighing all of us down alike. Unless we in Congress are encouraged to go on and to equalize taxation for all, we may yet see many other enterprises following the lead of the Des Moines oil dealers. That would be waiting until long after the government had lost untold billions on the fallacious theory that it is wise to let a few dodge taxes legally, at the expense of the many.



Higher Taxes Mean Higher Rates

It is not generally realized that the government is making more money out of the operation of public utility companies than the people who own them. The burden of higher utility taxes thus bears down on not only the utility investor, but also the utility consumer and the utility employee, suggesting a community of interest which this author proposes as a fruitful ground for community of action.

By SIDNEY P. ALLEN*
CHIEF EDITORIAL WRITER, SAN FRANCISCO CHRONICLE

THERE is no gainsaying that 50,000,000 Americans, and more, can be wronged—despite the adage that there is safety in numbers. At least that many customers, employees, and stockholders of our public utility companies are in one sense victims—pawns in a subtle game of pressure, squeeze, and blame.

The player is not top management, whose difficult task it is to keep everybody reasonably happy. It is your Uncle Sam. Federal, state, and local governments have the power to tax and to regulate, and so have maneuvered many of the pawns into a state of misunderstanding or incomprehension of facts concerning rate charges, profits, and who gets what out of the revenues.

There are more utility company customers than there are employees or stockholders, to be sure. Besides, the customer pays the freight for everybody. Then why not tell him the facts?

He is getting the most and best service in the world. Our standard of comfort and convenience is the envy of the world. The kilowatt hour, that genie of power, serves nearly all urban and more than three-fourths of farm dwellers. By any other comparison gas and telephone utilities perform a remarkably broad service, too.

Utilities make work easier, production greater, and life more full and pleasant for 148,000,000 Americans, either directly or indirectly. The customer, and he numbers upwards of

*For additional personal note, see "Pages with the Editors."

40,000,000, inevitably is concerned with getting all this at low cost. He does.

Considering Uncle Sam's take, in fact, it is remarkably cheap. For Federal, state, and local governments take a tax bite that is no mean part of every bill to every customer. In his primary concern about charges to him, the customer may overlook this tax matter.

UNCLE SAM'S tax collectors last year took from 11 cents to more than 20 cents of each dollar of revenue collected by utility companies from customers. The average tax take was better than 16 cents out of each dollar of revenue, judging by reports of utility companies in California.

For purposes of illustration, California concerns probably may be viewed as typical of those over all the nation. Here's how some were hit by the tax men:

Pacific Gas and Electric Company reported a total 1948 tax bill of $39,853,000; gross revenues were $204,000,000. Uncle Sam, then, got better than 19 cents of each customer dollar.

California Oregon Power Company reported a 1948 tax bill of $1,897,000; gross revenues totaled $8,954,167. Your government took better than 21 cents of each customer dollar.

Pacific Lighting Corporation, a gas company, reported taxes of $15,461,000 for 1948; gross revenues were $95,319,000. Government took 16 cents from each customer dollar.

Pacific Telephone & Telegraph Company, communications utility, reported a 1948 operating tax bill of $35,054,000; gross revenues totaled $346,489,000. The tax take through the company was about 11 cents per customer dollar. In addition, though, the company collected from customers $52,969,000 for Uncle Sam—his excise levy.

AT this time there is nothing to suggest that taxes are headed downward, regardless of trends in other costs. A substantial part of every utility bill, then, cannot be reduced by management to fit customer convenience. Only Uncle Sam has that power.

Nor is the utility customer being charged for the purpose of enriching the stockholder. Quite the contrary, in fact. The man or woman who invests savings in the development of a utility is working more for Uncle Sam than for himself.

Profit accruing to the stockholder generally is substantially less than that accruing to Uncle Sam in the form of taxes. Reports of some California utility companies for 1948 again serve to illustrate:

Pacific Gas and Electric in 1948 reported a net profit after all charges of $27,350,000, contrasted with a total tax bill of $39,853,000.

Pacific Telephone & Telegraph in 1948 reported a net profit of $25,734,000, contrasted with an operating tax bill of $35,054,000.

Pacific Lighting Corporation in 1948 reported a net profit of $9,987,000, contrasted with a total tax bill of $15,461,000.

THE customer, then, can have little quarrel with the stockholder. The stockholder might like to advance his selfish interest, but obviously he gets little opportunity. The customer might even sympathize a little with the stockholder, in fact, as he becomes even

more cognizant of Uncle Sam's exploitation.

For Uncle Sam likewise secures his bite out of whatever is paid in dividends to the stockholder. This means that utility revenue gained from charges to the customer is not taxed just once. It is bitten and bitten again in a double-take by Uncle. That has its serious implications to the vital problem of equity capital in the welfare of industry, but more about that later.

Nor is the utility customer being charged just so the utility employees can live a better life. For, company reports indicate, the wages and salaries of operating employees extract a sum not so very much greater than government takes in total taxes.

Thousands of people at work, aggregating hundreds of thousands, are paid not so much more by any utility company than is government, the customer might note. And their wages and salaries are, in turn, subject to the personal income tax.

Pacific Gas and Electric, in fact, reported for 1948 that wages and salaries paid to operating employees actually totaled less than the tax bill: $36,972,000 *versus* $39,854,000. California Oregon Power also reported operating wages and salaries were less than taxes: $1,792,000 *versus* $1,897,000.

THOSE may have been exceptions. It's difficult to tell, for all California utility companies are engaged in a big expansion. Few payroll figures clearly distinguish between operating labor costs and some exceptional labor costs involved in the expansion construction.

Indications, though, are that normal operating wages and salaries generally range from 10 to 40 per cent above a company's tax bill. Perhaps such costs could be lowered and savings passed along to customers, but it's doubtful. Why? Answers to two questions seem called for.

Are the utilities guilty of inefficiency? The record of performance speaks for itself. Power rates declined by successive stages into 1946. Then came inflation at the time of the vital huge expansion. Essential upward rate adjustments for power are just now approaching equalizing the reductions made from war's end through 1946.

Should the expansion programs be curbed or halted, or are they fundamental to our development? Obviously the road to a better standard of living is more service and more production for more people, quite aside from questions of national security.

THE utility company employee should be able to discern that he

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¶ "IN *the past few years some regulatory authorities have deliberated applications for utility rate increases at considerable length while operating and maintenance costs were soaring. In some instances the finally granted adjustments lagged so seriously as to bring about severe squeezes on company profits. This shortsighted preoccupation with rates of return, and the resultant squeeze, has incurred some company injuries that have yet to be healed.*"

too is in a considerable sense a pawn of Uncle Sam. At least, he can scarcely view himself as a victim of any mythical "trust" exploitation.

He might command more wages, to be sure, if rates charged to customers were raised sufficiently. But he is a customer, too.

He might squeeze more from the stockholder by reducing the stockholder return on investment, perhaps. But not if he desires to see his company continue to prosper and expand and thus create more and better job opportunities for him.

Already, as preceding figures attest, the stockholder is working more for Uncle Sam than for himself. If further squeezed, would anyone retain any incentive to save or to invest? Not very likely, particularly when Uncle Sam appears concerned primarily only with "parity" for government.

The stockholder, of all people, should labor under few illusions about his position as a pawn. As a part owner he must know that his company is not at liberty to set rate charges to customers at all the traffic might bear.

He must know that regulatory authorities fix rates, and so his allowed profit is largely predetermined for him. If he doesn't like it he can sell out. He can't extract more from the customers.

Nor can he get more from the proportion going to wages and salaries. Even if he could reduce those wages and salaries, a patently doubtful assumption, he likely couldn't accrue the benefits to himself. Regulatory authorities could construe the greater profit as indicating rates higher than the public (consumer) interests warranted and pass the profits out in lower rates.

ZEALOUS defenders of the public covet such opportunities, naturally. So, the stockholder is allowed just what Uncle Sam's regulatory authorities deem is right or believe is expedient.

The utility company stockholder, in fact, is in one important sense the truly forgotten man. He has reasonable stability of income from his investment, usually. That looms relatively attractive in a period when living costs are not rising.

But for some years most holders of utility stocks had nothing approaching a parity of income—despite the great political emphasis on the parity term. As a matter of fact, their purchasing power from investment income was virtually cut in half. They were denied the opportunity to share in prosperity.

The reason is simple and obvious. Stockholders in most large established utility companies are getting the same dividend as a decade or more ago. But, costs of living have risen precipitately, almost doubling at one point.

This, of course, is one of the subtle powers of regulation. Parity takes on quite a different meaning for a stockholder pawn—not connected with purchasing power at all—if it looms politically expedient. It usually does.

IN the past few years some regulatory authorities have deliberated applications for utility rate increases at considerable length while operating and maintenance costs were soaring. In some instances the finally granted adjustments lagged so seriously as to bring about severe squeezes on company profits.

This shortsighted preoccupation with rates of return, and the resultant

squeeze, has incurred some company injuries that have yet to be healed. An obvious example is Pacific Telephone & Telegraph.

Two years ago the company's drastic drop in earnings compelled it to sharply reduce its dividend. Neither its stock nor its stockholders have yet fully recovered. This, too, points to serious implications in the vital problem of raising new equity capital.

Pacific Telephone was and is in the midst of a huge expansion—and a vital one if communications service is viewed as a requisite of welfare, safety, and a rising standard of living. The company needed, and continues to need, money to finance this expansion.

The expansion program is no mere whimsy or executive dictate. Some 3,500,000 people have been added to the population of California in the past decade. War shut down all expansion not essential to national defense. But people require facilities and services.

To meet demands upon it, Pacific Telephone embarked upon the program at war's end. In 1946, 1947, 1948 its gross plant additions exceeded $500,000,000. Demand is not yet fully met, so the program is not yet completed. At the end of 1948, though, it had 3,744,000 telephones in service, up more than 1,000,000 from war's end.

Pacific Telephone has desired to sell stock, to secure permanent capital, in the past year to help finance the program. But the profit squeeze injury to stock value lingers on.

Other California utilities, electric power and gas notably, have undergone terrific growing pains since the war, too. Growth and development cost money. There is no other way to buy huge quantities of material, to produce vast new facilities.

Here is an idea of some of the sums involved: Pacific Gas and Electric since the war has spent over $300,000,000 for new dams, power plants, transmission lines, etc., and has scheduled a program for completion in 1951 to cost about as much again. Pacific Lighting has spent about $100,000,000 and is not finished by a long shot. Southern California Edison has added more than $100,000,000 to plant investment. All of a long list of smaller utility companies have added markedly to total plant investment, and though the dollar figures are not as impressive separately, in the aggregate they add up to many millions.

Uncle Sam's use of his pawns cannot be said always to have helped the utilities to soundly finance the new requirements. Government is double-featured in this instance. For certainly the tax-collecting side, and sometimes even the rate regulatory side, has not functioned in the genuinely long-range interest of the public.

Taxes certainly, and rigorous rate regulation probably, have tended to foster a greater and greater proportion of debt to total utility capital. This is no strengthening force to free enterprise.

Earnings accruing to stockholders are heavily taxed, and so are dividends. So equity financing is made less attractive, stock less easy to market. Bond interest is an operating charge, hence not taxable. Money is cheap, so interest rates are low. Thus going into debt is made easier, even momentarily advantageous.

This invitation to debt may in some

No Depression for Taxes

"At this time there is nothing to suggest that taxes are headed downward, regardless of trends in other costs. A substantial part of every utility bill, then, cannot be reduced by management to fit customer convenience. Only Uncle Sam has that power. Nor is the utility customer being charged for the purpose of enriching the stockholder. . . . The man or woman who invests savings in the development of a utility is working more for Uncle Sam than for himself."

measure be attributed to rate regulation, too. For earnings accruing to stock may be construed by the political regulatory authorities as a fair target in rate considerations. But debt cost is an operating charge, hence not a target.

Debt, in a truly free economy, is not desirable. It is only expedient. Yet California utility companies, in strong financial condition at war's end, have found it necessary to vastly increase debt in the postwar expansion.

Proportion of debt to total capitalization has risen from conservative and safe limits to 50 per cent and more. A glaring example is Pacific Telephone & Telegraph. The debt now constitutes 54 per cent of the company's total capitalization, contrasted with just 17 per cent as of VJ-Day.

Since the company last year reported earnings of less than 5 per cent on its total capital investment, it is clear that only the low interest cost on a big proportion of debt enabled the company to distribute a reasonable dividend to stockholders. For most of the bond debt, of course, carries an interest rate of 3 per cent or less.

Large debt, this implies, at this time appears virtually mandatory to maintenance of any reasonable return to stockholders on their more risky investment. The utility company scarcely can be blamed for this debt mushrooming, but the trend is not essentially healthy to our economic future.

The profit incentive of ownership is dulled. The individual self-reliance, the personal drive to save and to directly participate in enterprise development, is curbed. A dictated ceiling is placed on potential profit rewards, but the risk of loss is entirely the individual's own problem.

This is not the process that built

America or the American standard, obviously. Regulation should be farsighted and constantly cognizant of the desirability of equity as contrasted with debt financing. Otherwise it can only be a stifling process that tends to cultivate collectivism.

Currently the investment appetite for stocks of utility companies is keen only by comparison with the recent almost complete lack of such appetite. Yet right now comparative stability of income, plus better buying power of dividend dollars as supply of goods overtakes demand, should be very enticing to potential investors. Why isn't it?

The answers are investor fear of shortsighted regulatory policies and practices, perhaps too heavy debt, and foremost the weight of taxation plus the double taxation on dividends. Added to this is the prospect of another period of deficit financing and cheaper money.

CHEAPER money naturally suggests prospects of higher operating, maintenance, and replacement costs—a rising overhead for utilities. Higher rate charges inevitably would have to be permitted to follow, but as in the past they could lag to the point of exerting new sharp squeezes on potential profits.

Deficit financing, just as naturally, prompts thoughts of even higher tax levies by Uncle Sam. With the stockholder already in the position of seeing his invested savings at work more for government than for himself, such a prospect is anathema. Where's the incentive to save, to attempt to build one's individual and personal security?

Nobody, of course, can know what the future holds. The trend, however, seems to have been fairly clearly defined. Certainly the evidence suggests that continuing tax demands constitute one of the foremost reasons why utility rates are likely to continue to press upwards, why new capital for investment is reluctant.

Perhaps today's great scramble for security on the part of the pawns—customers, employees, and stockholders—has blinded them to the long-range dangers in this game. Perhaps it is too much to presume that mere pawns should demand an even break with their Uncle Sam. Perhaps the politically inspired notion that corporation taxes cost the individual little or nothing has been too well implanted to permit of its dislodging.

Maybe it's too late, but the stakes are high. Individual initiative, freedom of choice and opportunity, and finally economic and political freedom, can be lost. Unless the pawns bestir themselves and command a reasonable parity with Uncle Sam, then 50,000,000 Americans—and a whole lot more—will be irrevocably wronged.

"IF the government keeps getting bigger, as President Truman prophesies that it will and says that it should, there is no end to the road of heavier and heavier taxes until such a day as the people themselves awake and call a halt."

—EDITORIAL STATEMENT,
The Wall Street Journal.

The REA Capital Credits Program

Most coöperatives have a relatively small investment in relation to their business volume—generally contributed by members. An REA coöperative, however, has a high capital investment because of the economics of electric power operations—and generally all of its original investment is borrowed through REA. Several years ago the Federal REA brought forth the "Capital Credits Plan" whereby REA co-op members agree among themselves that any payment above the cost of service shall be regarded as capital furnished by the patron to the co-op. The co-op credits such patrons with capital on its books for eventual return. Here is an analysis of the Capital Credits Plan and its purpose, apparent and otherwise.

By FRANKLIN J. TOBEY, JR.*

Nobody is opposed to ordinary neighborly coöperation. Perhaps the word "coöperation" has become too strong a term for the old form of American neighborliness, expressed in a number of practical ways —especially as an important factor in rural life and economy. Barn raisings and joint-harvesting efforts are still looked upon as typically "American."

But in recent decades the word coöperation has taken on a collectivist connotation. Spontaneous coöperation has been replaced in the popular mind by organized coöperation via the "coöperative" form of enterprise. When Soviet writers use it (and they use it often, because the "coöperative" form is an important adjunct of Soviet economy) they mean something quite different from the American concept. But even our American concept has become confused by specialized applications. These in turn run the gamut from simple rural marketing and purchasing groups, through the REA variation, to the million-dollar superproduction jobs which have been criticized as out-and-out tax-dodging devices.

This largely tax-exempt institution is regarded by some as not quite conciliable with "fair play" and "healthy competition." To social reformers, looking at the social results obtained for immediate co-op members, all means to that end are sympathetically viewed and morally rationalized.

Co-ops, including the rural electric co-ops, are not necessarily "infant industries" which need protection in order to mature and then serve the

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greater common interest. That thought has not been a part of the coöperative plan or its basic concept. Many co-ops which had small and laudable beginnings, based on real neighborhood need, are now huge thriving concerns with all the physical characteristics of successful business enterprises. In addition, they also have had privileges and advantages bestowed upon them by the Federal government while sharing only part of a commercial corporation's public duties and responsibilities.

It is interesting to examine, in light of this, a program fostered by a Federal agency which frankly encourages small economic institutions to retain the co-op form. Conversely this program discourages (if it does not practically prevent) that unit from even becoming a small typical business enterprise, subject to the same stresses and strains (including regulation by government) as its "competitors" or similar privately owned business operations in the same area or similar environment.

The program referred to is the co-op Capital Credits Plan which has been designed and fostered by the Rural Electrification Administration, under auspices of the United States Department of Agriculture. Avoiding the controversial question of "when is a profit *not* a profit?"—let us examine other characteristics and implications of the plan.

"The essence of the plan," says an REA circular pamphlet, dated November, 1946, "is an agreement, with the legal form of a contract between the coöperative and its members that any money paid in by the patrons above the cost of serving them is paid in by them *as capital.* Each patron will get it back eventually when the co-op has accumulated sufficient capital to insure its financial stability."

The ostensible advantages of the Capital Credits Plan for the co-op members are (1) to build up an equity interest for the co-op patrons in proportion to their patronage, (2) to strengthen the sense of personal interest of the members in the local ownership and management of the business, and (3) to provide some incentive for more patronage in the form of eventual return credits as cash to the patron.

BUT somewhat more critically viewed the Capital Credits Plan can accomplish the following objectives:

(1) *Immunity to taxation.* The co-op's receipts, over operating expenses and loan requirements, would not be refundable as ordinary "profits" or "income"; but instead sewed up—by agreement—in the form of "Capital Credits" to patrons. This would insure income tax exemption, even though Congress should some day change its mind about the tax exemption which co-ops presently enjoy.

(2) *Immunity to liquidation of the coöperative.* The plan would make it less attractive for a private power company to buy out co-ops because co-op members would no longer sell out their systems for the unpaid balance of the government loans. They would be bound by contract also to liquidate a total in the amount of "Capital Credits" entered on the books in favor of the individual patrons (whether members of the co-op or not).

(3) *Immunity to public regulation.* To the extent that co-ops enjoy immunity from regulations by public service commissions (as is the case in most states), the retention of the co-op form—through the operation of the Capital Credits Plan—would be correspondingly assured.

(4) *Immunity to profit incentive.*

The Capital Credits Plan starts out fresh on the basis of actual patronage —regardless of whether the patron is a co-op member or not, or how long he has been a patron. Under the plan, older members find themselves bound by contract to honor Capital Credits accumulated by more recently attached patrons. Furthermore, Capital Credits would only accumulate during the years in which the co-op is operating in the black. Any deficit operation would not be deductible from existing credits. Deficits would be charged to co-op operations as a whole.

THE plan guarantees that local power consumers will become "contributors of capital" with the avowed purpose and hope that this will act as insurance against the electric co-ops falling into the hands of a public utility company. Adoption of the plan confirms the coöperative form of organization upon the REA co-op—in advance of its being weaned from REA—and virtually obliges the group to retain the co-op form.

This brings up an interesting question. Why is an agency of the Federal government so interested in stamping the nation's rural electric service agencies with the coöperative form? Should the REA, which claims to be only a "lending agency," care what form a given enterprise takes, once it has repaid its debt to the Federal government? What if these organizations were left to determine their own future —after REA? Some co-ops might conceivably be interested in reorganizing as local small businesses. Of course, dropping the co-op form in favor of incorporation would mean, in most cases, that the unit would come within the jurisdiction of the state regulatory commission. It would also lose a number of other privileges conferred upon co-ops by government, certain tax advantages to name one. Or to name another, statutory "preference" in the purchase of public power or surplus property from the Federal government.

Let's assume, however, that farmer co-op members in a certain area might wish to get out of the electric business by handing it over, for value received, to a regular commercial power company. Without the plan, this could happen at any time, either before or after its indebtedness to REA has been paid off. After the co-op has adopted the plan, it would then pose additional obstacles to be overcome, before any sale or transfer of property could be made.

WHAT was the origin of this co-op Capital Credits Plan? Legally speaking, the plan is based on a 1910 precedent established by three railroad companies which decided to build and maintain a railroad bridge across the Ohio river (Paducah, Kentucky, to Metropolis, Illinois) for their joint use. The three railroad companies contrib-

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uted to the upkeep in proportion to their traffic over the span. But how about an excess, above operating expenses? Would it become a profit, to be taxed against each contributing road? Or could it be viewed as a *pro tanto* reimbursement of capital?

In the tax appeal case of the Paducah & Illinois Railroad Company (2 BTA 1001) which was determined by the U. S. Board of Tax Appeals in 1925, the court ruled that any such accumulation of funds, resulting from the agreement, was in fact a "capital investment." This convenient precedent was used by REA's legal staff as a solution to the problem of providing co-ops with a program for accumulating capital funds out of operating receipts—funds which would be immune from taxation as "profits," even if Congress should ever repeal the present income tax exemption enjoyed by co-ops—as small business interests are even now demanding. The REA circular admits as much when it states:

> Because the true surplus of a business is taxable income, some critics of co-op enterprise look upon balances over expenses of coöperatives, even if earmarked for return to patrons, as though they were taxable surpluses. Under the Capital Credits Plan there can be no such confusion because of payment.

THE ordinary (non-REA) consumer's coöperative requires a relatively small capital investment in proportion to its annual earnings, therefore it can afford to grant dividends on any accumulated surplus. The REA electric co-op, however, requires a high capital investment in proportion to annual earnings. Payments by patrons in excess of co-op costs cannot be returned to the patrons immediately in the form of refunds, REA argues, since they must be applied to the reduction of the REA loan. Using this basis, any payments made by REA co-op patrons in excess of the cost of service are considered to be "capital" supplied by the patrons.

Where they have not already done so, REA electric co-op members are now being urged at their local meetings to adopt the Capital Credits Plan. Such adoption basically involves an agreement between the co-op and its members—with the legal force of a contract—which releases the co-op management to use, as investment capital, any funds left over after the actual cost of service has been subtracted from rates charged for service. Thus, the older or founding members, who have seen the co-op through its earlier and perhaps leaner years, surrender their rights as owners to future income in excess of expenses, and agree by mutual consent to turn it over to future patrons (including themselves) but on the basis of future patronage.

REA pamphlets on the plan say: "We strongly recommend adoption of the plan by REA co-ops. REA lawyers have studied the plan with great care and should take credit for the basic framework as well as for working out the fundamental details. The plan is also in keeping with co-op principles and is recognized as sound co-op practice. . . . We have been in very close touch with other co-op programs . . . and find them fully consistent with this plan."

This is in line with Agriculture Department theory and practice. Claude R. Wickard, present REA Administra-

Why Co-ops Stay That Way

"It is not mere 'indoctrination' that strengthens the co-op members against any desire to sell out or turn into full tax-paying members of the commercial community in which it operates. There is still that leverage which is contained in its tax and other advantages. The plan represents an added incentive to communal ownership in which real ownership is so dispersed and indefinite that it has little meaning."

tor, and former Secretary of Agriculture, says the co-op form is preferred —not through any desire to promote coöperative philosophy—but because his department has found "historically" that it is the only form which can be depended upon to deliver the goods, and do the job of area coverage, as opposed to the selective coverage of the private utilities.

The mechanics of the adoption of the REA "Capital Credits Plan" by a power coöperative requires amendment of the coöperative's bylaws. This, in effect, confirms the coöperative character upon this type of setup. Ostensibly, the amendment is required to enable the coöperative management to divert the surplus of revenue over cost as "capital" from the members as owners, who would otherwise be entitled to it as income or "refunds." In an ordinary consumer co-op, such surpluses would be paid to the members in the form of a rebate.

All patrons of an electric co-op (new and old) participate fully in the plan. This is designed to encourage new members and nonmember patrons in the area to go along with the co-op nature of their power supplier. The charter members who have pioneered the co-op are reassured by REA that they are not being assessed individually for any operating deficits the co-op may have incurred during its first years. They are reminded that they were actually getting service below cost then, and that they cannot expect credit for capital in years when no capital was furnished. They are rather frankly told that they have assumed no risk—that all the risk was taken by the Federal government which supplied the needed funds through the REA.

In this comparison of members' rights with patrons' rights, it should be remembered that members alone can participate in running the co-op's af-

fairs, in electing its directors, and establishing its policies. Nonmember patrons have no share in the control over the co-op, and no voice in its policy council. But they are entitled to credit for any "capital" which they furnish.

Some enthusiastic REA co-op members with an eye to organizational betterment have suggested that the capital credit of nonmember patrons be used as a down payment on that patron's membership dues in the co-op. REA frowned officially on this device as being obviously undemocratic. It states: ". . . remember you can't make a man a member without his consent . . . it is much better for the co-op if he has, and expresses—by paying $5 out of his pocket—a desire to become a member."

Now let us examine these credits: These credits represent the amount of money furnished by the member during a specific year (as said heretofore) in excess of the cost of service. What would the co-op do with it, under the plan? Instead of refunding this money as the ordinary farmer co-op would, the REA co-op could use it to pay (1) interest on its debt to the Federal government; (2) as working capital; (3) repayment of loans ahead of schedule; and (4) replacement of or expansion of plant or to meet any other legitimate capital need. After that (*i.e.*, if the money isn't still needed for any of these things), liquidation or repayment of outstanding capital credits could proceed in accordance with the decision of the co-op management.

UNDER the plan, each member or "patron" gets "capital credits" in proportion to his payments for electric service during the year. If a co-op has received from all of its patrons $100,000 in payments of electric service, and if the cost of providing the service was only $90,000, then 90 per cent of every bill paid is applied to the cost of electric service and 10 per cent is listed as patronage capital. Therefore, a patron whose service bills total $200 will be credited with $20 on his patronage capital account. A patron whose electric bills total $60 will be credited with $6 on his patronage capital account on the co-op books.

Maintaining the plan requires a certain amount of bookkeeping by the co-op management. The manager sets up an account for each patron. Each year the "surplus" capital is credited to that patron in his capital account and he is notified of his contribution. Where the plan is well established, the co-op issues a certificate which represents the amount which the patron has "invested." These certificates are non-interest bearing and they never lose or pick up value. REA says the certificate represents a "specific personal equity in the physical properties of the co-op." Because of the uncertainty of co-op policy the certificate might, in a sense, be viewed as representing theoretical intention to refund the money some time in the distant future.

These certificates, according to the plan, would be retired serially, when the entire indebtedness of the co-op has been wiped off the books and there is sufficient surplus still coming in to guarantee that members' and patrons' contributions can be paid off.

There are many factors that may delay this eventual payment. No patronage capital can be retired until the co-op has obtained enough money to take care of its needs and in the mean-

time REA encourages the co-op to make new loans to "heavy up" the lines or expand coverage. If a co-op has had heavy operating deficits in some years, it will, of course, take longer for the co-op to reach the point where it can begin to retire patronage capital.

In its folder on the plan, REA says: "Of course, it will be a long time before an REA co-op can begin to pay back any of the capital furnished by its patrons." From the same pamphlet, one co-op member asks, "Can I look forward to getting any large sums of money when my capital credits are retired?" REA answers, "Probably not, if your co-op is efficiently managed." The explanation follows to the effect that the capital credits account may function in a manner similar to the "barometer funds" of certain public utilities.

The question arises, and it is largely a matter of policy of the individual co-op, whether the co-op will see fit to accumulate receipts in excess of expenses and fixed costs and, therefore, many capital credit entries, or whether it will just cut rates to conform more nearly with the cost of power. One possible use of large reserves is their possible application to expand the co-op service area through acquisition of neighboring utility service units, private or municipal. There is also the question whether some of these funds may be used for "educational programs" which are considered perfectly in order in the coöperative movement.

REA strictly avoids any association of the word "stock" in reference to the capital credits plan. Or, any suggestion that the co-op might need this extra "shot in the arm" in order to maintain its operations and repay its debt. REA praises the co-ops generally and states that they are "doing better than was initially expected." REA's pamphlet on the plan also stresses the angle that patrons are thus building up local ownership in the co-op properties while it is paying back the government loan.

Only in the case of over-all liquidation would a co-op's operating deficits affect the value of its patron's capital credits. As long as the business is a going concern, the entries in the individual patron's account show what they will get when, and if, the time comes to retire the capital provided in any particular year or years. On the balance sheet, the net worth section might have an item called "capital credits" but the amount listed there would not necessarily be the sum of those credits if there had been any operating deficits.

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¶ "Why *is an agency of the Federal government so interested in stamping the nation's rural electric service agencies with the cooperative form? Should the REA, which claims to be only a 'lending agency,' care what form a given enterprise takes, once it has repaid its debt to the Federal government? What if these organizations were left to determine their own future—after REA? Some co-ops might conceivably be interested in reorganizing as local small businesses.*"

In summarization, let us recount the functions of the Capital Credits Plan. First, it preserves the co-op entity and provides a nest egg for expansion. Second, it provides use of what would ordinarily be called "earned income" as capital without the onus of the terms "surplus" or "profit." Third, it may save the co-op from the need for applying to a private institution for a private loan at a high rate of interest. Additional REA loans would not be thus inhibited. Fourth, it provides financial insulation from any attempted merger or acquisition move by a public utility company.

About 25 per cent of all REA co-ops have adopted the plan. Some of the first started in 1941. REA contends that the plan has not been designed for the benefit of the government. It is true that the government's investment is better protected. It is also true that REA has through the plan laid the foundation for perpetuating the co-ops indefinitely. REA is well aware of the fact. The covenant between the members agreeing to the Capital Credits Plan, and the public referendum needed before the plan can be dropped (assuming that the financial condition of the coöperative will permit it), virtually guarantees the continuance of the co-op form.

Just how the REA can justify Federal government encouragement of a form of enterprise which must thrive on tax avoidance and the avoidance of regulation and other rules of business, which the nation's regular commercial system of private enterprise must obey, is not so clear.

It is not mere "indoctrination" that strengthens the co-op members against any desire to sell out or turn into full tax-paying members of the commercial community in which it operates. There is still that leverage which is contained in its tax and other advantages. The plan represents an added incentive to communal ownership in which real ownership is so dispersed and indefinite that it has little meaning. This will persist, even assuming eventual retirement of all capital loaned by patrons, which is akin to the social millennium.

Financing Plant Expansion with Inflated Dollars

"The inflated dollars earned and retained by American corporations are not adequate to finance normal improvement of the productive facilities of the country. This threatens needed technological advancement and the traditional improvement in living standards to which Americans have become accustomed. It is especially alarming that government economists should foster the myth of high corporate profits, and thereby encourage the adoption of national policies based on an illusion. The myth of high corporate profits has been built up by those who have failed to take into consideration and to make clear that the corporation's dollars are inflated like all others, and by others who have made invalid comparisons, particularly with years of low production and employment."

—William J. Kelly,
Chicago industrialist.

Washington and the Utilities

Senate Votes Funds for Public Lines

NINE Democrats joined with twenty-nine Republicans in the Senate on the most controversial amendment recommended by the Appropriations Committee for the Interior Department Appropriation Bill. But it fell short of enough to uphold the Appropriations Committee, which wanted to cut funds for building transmission lines by the Southwestern Power Administration. Eight Republicans joined thirty-seven Democrats in rejecting the committee action. And so it was by a vote of 45 to 38 that the Senate refused to delay appropriations for building the lines. And the test on the SWPA funds was followed through by similar victories for public power lines in the case of the Bonneville Power Administration.

And yet the majority was not so much out of line with the minority on the matter of principle. It was largely a matter of timing. Senator Thomas (Democrat, Oklahoma), spokesman for the committee, drew the pattern of the Senate committee's position on the controversial question. The Federal government, he said, already has realized its objectives, without building duplicating facilities, in the form of a contract with the Texas Power & Light Company. Why cannot the government do likewise with other public utility companies in other areas? These companies have recently indicated their willingness to do so. The taxpayer should therefore be saved the expense of building government lines.

SENATOR Hayden (Democrat, Arizona), chairman of the Interior Appropriations subcommittee, who joined in the vote for the full committee report, represented the majority viewpoint. He admitted that the Texas contract is a good arrangement. It should be followed elsewhere, if possible. But the Federal government would be in a better bargaining position, he said, if the funds for building the lines were restored in the present bill. Then the Interior could go ahead with building government lines, if the other power companies were unwilling to come to terms. Senator Thomas said that he would be willing to put the money back into an Interior Appropriation Bill next year, if the power companies in other areas fail to get together with the government.

The difference between Senators Thomas and Hayden, therefore, seemed to be a question of negotiating procedure, rather than ultimate objective.

Of course, there still remained some Senators who want public power expansion under any circumstances, regardless of how many concessions private power companies are willing to make. Senators Murray (Democrat, Montana) and Kerr (Democrat, Oklahoma) urged that the government build its own transmission lines in any event. But most of the Senators during debate praised the Texas contract. The position of Speaker of the House Rayburn was likewise disclosed as favoring the Texas contract pattern.

Thus it appears that even in turning down the recommendation of its Appropriations Committee, a majority of the Senate favor a policy of having SWPA work out contract agreements with the private power companies in the southwestern area—along the lines of the contract which SWPA now has with the Texas Power & Light Company.

Senator Fulbright (Democrat, Ar-

kansas) stated during the floor debate:

> I am supporting the appropriation carried in the House bill upon the assurance and with the understanding that the Interior Department will make a good-faith offer and enter into negotiations with the power companies in an effort to work out a contract based upon the principles and following the pattern of the one which has been adopted in Texas.

SENATOR Johnson (Democrat, Texas) struck the same note in his argument in favor of restoring the funds. He said:

> I predict that if the Senate in its wisdom now restores the funds carried in the bill as passed by the House of Representatives, the man who negotiated the original Texas contract, Mr. Wright, will negotiate another contract if the companies are willing.
>
> I do not object to transmission contracts between the government and private companies. I do not object to the proposal to let private companies build transmission lines and transport public power. I know that such an arrangement has worked successfully in Texas — the only place in the nation where it has been tried; and the man who put it into effect is the head of this administration.

Senator Hayden likewise stated:

> But we do expect Mr. Wright to make a sincere effort, and we do expect the power companies, in accordance with the representations they have made, to accept that kind of offer. Of course, if some preferred customers at a great distance applied for power it would not be feasible for the government to build long transmission lines to serve them, and the request would have to be denied. But where the situation fits, to the location, so that a private power company can do the transmission job, we expect it to be done. As chairman of the subcommittee handling the appropriation bill, I am going to hold Mr. Wright responsible for carrying out the pledge which he has made.

The hope that a "pattern" for better government-industry understanding on the building of duplicate power lines is still thus kept alive despite the failure of the Senate to back up its own committee's absolute directive to the Interior Department to work out contracts with the power companies. The total amount of $9,000,000 voted by the Senate for SWPA equals the administration's full budget requirements. It contains increases in both cash and contract authority which the Appropriations Committee wanted to cut $3,874,000. The Senate also voted (47 to 35) to set up a $300,000 "continuing fund" for SWPA. And, if the SWPA decides to commence building the lines, Congress is committed to a total over-all appropriation of $31,000,000 over the next three years. The Senate, voting late last month on other disputed items in the Interior Department Appropriation Bill, was expected to follow the trend set by the vote on the SWPA lines.

WHETHER partisan division of the Senate vote presages development of a political issue on the subject of public power expansion at the expense of private enterprise depends on whether contracts with the private companies are actually worked out during the coming months. If the Interior Department negotiators arbitrarily refuse to come to terms despite concessions made by the private companies, an issue of good faith can be raised regarding the spending policies of the Senate majority. Douglas Wright, SWPA Administrator, who negotiated the Texas contract, has pledged that he will seek similar additional contracts with the private companies.

On August 24th the Senate adopted (45 to 35) an amendment by Senator Magnuson (Democrat, Washington) to increase Bonneville Power Administration funds by $375,000, adding the language, "including funds for construction of Kerr-Anaconda transmission facilities." It also adopted an amendment by Senator Hayden to increase Bonneville funds for power transmission facilities by $322,500.

New Louisiana Gas Line Opposed

A MOVE to pipe natural gas from Texas and Louisiana fields into the lower Southeast got under way before the Power Commission last month.

The Atlantic Gulf Gas Company, of Shreveport, is seeking permission to build a 1,731-mile pipeline from south of New Orleans through southern Mississippi, Alabama, and Georgia to Jacksonville.

W. Scott Wilkinson, of Shreveport, counsel, said the project is estimated to cost $92,000,000. The line would tie into a United Gas Corporation line at Pointe a la Hache, Louisiana.

The petition for a certificate was filed in April, 1947. The Southern Natural Gas Company made a similar move to serve the same territory and is listed as an intervener in the Atlantic Case.

Railroads serving the southeastern United States said they oppose construction of a natural gas line from Texas and Louisiana fields into the lower southeast. The attorneys in preliminary statements said they intended to show that the line is "not in the public interest" and would do irreparable damage to the railroads.

Wilkinson said the proposed line would be financed by 25 per cent sale of stock and 75 per cent sale of bonds. He also said they were ready to begin construction as soon as they obtain an application. Completion is set for the summer of 1952.

Fifty-four cities and towns including Savannah, Georgia; Charleston, South Carolina; and Tallahassee and Jacksonville, Florida, would be served.

The territory to be served is now without natural gas, although eleven cities have manufactured gas, Wilkinson said.

Interveners include the National Coal Association, the United Mine Workers, Brotherhood of Railroad Conductors, Brotherhood of Firemen and Engineers, Switchmen's Union, Atlantic Coast Line Railway, Central of Georgia Railway, and the Southern Natural Gas Company which has filed an application to serve the same territory.

Flood Control Bill Passed

THE House passed with only a single dissenting vote the "billion plus" omnibus Rivers and Harbors and Flood Control Bill—first since 1946. A total of $995,000,000 goes to flood-control projects. The balance of $119,539,975 goes for rivers and harbors projects. Its supporters repeatedly stressed the fact that appropriations for particular projects must still be made by Congress in subsequent specific appropriation bills.

Among the power projects authorized in the House-approved bill, to be built by Army Engineers, was an item of $31,070,000 for the Albeni Falls multipurpose dam on the Pend Oreille river in Idaho. This dam is supposed to benefit downstream projects to the extent of 265,000 kilowatts when distributed among the Grand Coulee, Chief Joseph, McNary, Bonneville, Priest Rapids, John Day, and the Dalles project. Blanket amounts also are authorized for the continuation of a number of river basin programs, in which power projects are included: Savannah river basin-Hartwell dam ($40,000,000), White river basin ($35,000,000), Missouri river basin ($250,000,000), and the Missouri "comprehensive plan" to be carried out with the Secretary of Interior ($200,000,000).

An initial expenditure of $40,000,000 on the projected $68,500,000 Hartwell dam was included. Hartwell will be the second of a series of eleven dams proposed by Army Engineers for development of the Savannah river basin. The Hartwell dam site is about thirty miles from Athens and about ten miles from Anderson, South Carolina.

Representative Brown (Democrat, Georgia) said the omnibus bill also includes authorization of $3,137,000 for channel work on the Savannah river between South Carolina and Georgia from Savannah to Augusta.

If the Hartwell dam money is approved by both House and Senate, Hartwell will go on a list of authorized projects. The next step is when the Appropriations committees of both branches of Congress select it for an actual appropriation.

Exchange Calls And Gossip

Task Group Formed

JOHN R. STEELMAN, presidential assistant and chairman of the National Security Resources Board, recently announced the formation of a task group to study the requirements of the nation's telegraph and telephone communications industry in the event of an emergency. The group will look into the needs, under war conditions, of the domestic communications operating industry, with special emphasis on the impact on manufacturing capacity. It also will stress needs for raw materials and reserve stocks of manufactured items to provide the service necessary in an emergency.

The assignment calls for inquiries that cover both the period during conversion when civilian orders on hand are being completed and the later period when requirements must be limited to minimum maintenance, repairs, and provision of essential operating supplies. The committee also has been asked to make recommendations on stockpiling of the principal materials that the industry might require.

H. V. Bozell, president of General Telephone Corporation, New York, is chairman of the group. Other members of the committee are: F. E. Norris, also of the General Telephone Corporation; T. S. Gary, president, Automatic Electric Sales Corporation, Chicago; E. R. Wheeler of the Western Union Telegraph Company; C. D. Manning, vice president, Kellogg Switchboard & Supply Company, Chicago; H. S. Osborne of the American Telephone and Telegraph Company; and F. W. Bierwirth of the Western Electric Company.

The special task group will report to the Office of Production of the NSRB.

Charges Color Video Held Back

SENATOR Edwin C. Johnson (Democrat, Colorado) last month charged the development of color television is being "blocked arbitrarily by selfish interests." The chairman of the Senate Commerce Committee said those "who have been most active in pushing color television suddenly have become very cold to further efforts in this direction."

He said a demonstration he attended recently in Washington, D. C., "proved beyond any question that color television is here now."

The Radio Manufacturers Association, meanwhile, denied that the manufacturing industry has retarded or opposed color television development. It asserted, however, that even if the Federal Communications Commission should quickly authorize color television, it would take the manufacturers several years to get the necessary equipment into the hands of the public generally.

It said the owners of 2,000,000 present television sets should be protected. Any color television system approved by the FCC should enable these owners to receive the color transmissions by buying converters at relatively small cost, the manufacturers' statement said.

The statement was filed with the FCC. Senator Johnson made his charges in a letter to Paul A. Walker, FCC vice chairman.

FCC Bans Give-away Shows

THE Federal Communications Commission last month ruled against the broadcasting of radio and television give-away programs, holding they were

in violation of the United States Criminal Code section on lotteries. The commission said that no immediate action would be taken against present programs of this type, but that after October 1st it would not renew licenses nor grant construction permits to broadcasters featuring this type of entertainment.

The commission noted that § 1304 of the Criminal Code, as enacted by the 80th Congress, made unlawful the broadcast of any lottery, gift presentation, or similar scheme by a broadcasting company. This action, the commission held, was codified from § 316 of the Communications Act and did not in any way "affect or change the impact against the broadcast of lottery information as a criminal provision."

The American Broadcasting Company was said to be preparing a court test of the power of the FCC to curb such programs. On the outcome of the legal action, industry circles agreed, would depend the fate of more than fifty network give-away shows, which have been distributing merchandise and prizes at a rate in excess of $4,000,000 a year. Hundreds of similar programs on independent stations also would be affected.

The ABC network charged that the FCC was attempting to write a new definition of a lottery and "extend existing law."

The two other networks, the National Broadcasting Company and the Mutual Broadcasting System, refused to comment before studying the FCC regulations in detail.

Commission Assumes Power

THE District of Columbia Public Utilities Commission recently decided it has the power to say whether telephones allegedly used for gambling may be removed. It ruled that it can decide in individual cases whether the Chesapeake & Potomac Telephone Company has the right to cut off service because there is suspicion or evidence the phone is used for gambling.

Disconnection of service is still allowed under the following conditions: (1) The company must give notice to the subscriber that his telephone may be disconnected—and why. (2) The company must also inform the subscriber that he has a right to appeal to the District of Columbia Public Utilities Commission. (3) Upon the filing of a petition for such an appeal by the aggrieved subscriber, the commission will grant an immediate hearing. (4) At such hearing, the telephone company must produce its evidence of illegal use (presumably furnished by the district attorney, police, or other authorities), upon which the telephone company purports to act. (5) The disconnection will be held up until the completion of the hearing, and final ruling of the commission as to the sufficiency of the company's evidence. (6) While the commission may not compel public authorities to divulge evidence they have collected, it could prevent a disconnection of telephone service unless enough evidence of unlawful use has been developed before the commission.

May Hike Phone Company Tax

CITIZENS of Spokane, Washington, are reported to be showing little interest in the Pacific Telephone & Telegraph Company's recent request for rate increases. At a recent session, the city council considered increasing the city franchise tax on the company. Commissioners said they thought talk of the tax increase would jolt the public out of its apathy about the company's move to raise telephone rates.

Also adopted was a resolution which was sent to the state public service commission protesting any increase in rates and requesting the commission to conduct a full investigation and hearing to determine if any increase would be justified.

Commissioners said no complaints from local residents had been received regarding the increased rate schedule proposed by the company. They explained that an increase in the franchise tax would be felt by the people because the company probably would pass the increase to consumers.

Court Denies Motion

THE New Hampshire Supreme Court has denied the motion for temporary relief filed by the New England Telephone & Telegraph Company recently after the state public service commission had rejected its plea for higher temporary rates.

The company sought "interlocutory relief" and an injunction against the state commission to prohibit "interference with the promulgation by the company of certain temporary, monthly base rates, pending the establishment of permanent rates by the public service commission."

Renewal of the commission's hearings on the permanent rate structure of the telephone company was scheduled for September 15th.

In the recent court decision, it was ruled that "the motion is denied without prejudice to any right of renewal should the public service commission fail to revise its order after a seasonable time for reconsideration."

The court pointed out that all temporary or permanent rates are fixed by the commission and that an appeal from the commission's order is provided for. There having been no appeal in this case (the company filed a motion for relief) the evidence and findings of the commission hearings were not before the court.

In its July 18th order, denying temporary increased rates, the commission included a provision for "recoupment" should subsequent hearings show that the company should have been entitled to increased rates during the period it sought the temporary rate boosts.

In its motion to the court, the telephone company argued that this "recoupment" provision was "without force and effect" because the commission had not, in fact, established any temporary rates.

Seeks Rate Increase

THE Peninsular Telephone Company last month asked for rate increases costing its 132,000 customers $1,500,000 a year. Carl D. Brorein of Tampa, Florida, Peninsular president, told the Florida Railroad and Public Utilities Commission the money is needed for improvement of service. Actually, the company will get only about $600,000 of the increase after taxes are deducted, he said.

Exchange rates will be boosted about 22 per cent if the full increase is granted, Brorein said. The increase on all revenue, including exchange rates, tolls, and miscellaneous revenue, would be 15.8 per cent, he stated.

Brorein said the company has had no rate increase since 1926. Many exchanges have not had rates boosted since early in the twenties and many others had reductions in 1935.

Meanwhile, all costs have been mounting, Brorein reported—from $1,650,000 in 1938 to $6,245,000 for the year ending April 30, 1949. Wages rose from $77,429 a month to $214,445 a month, and taxes from $326,000 to $1,255,400 a year.

Revenue too increased from $2,373,000 in 1938 to $7,790,000 for the twelve months ending last April 30th. However, the return on the investment for that twelve months was only 3.69 per cent, Brorein said, compared to 7 per cent which he said the state of Florida has fixed as "a fair and reasonable rate of return under comparable conditions." Taking into consideration depreciation and other factors, the proposed rates would bring less than a 5 per cent return.

Two Tampa bank officials testified at the hearing that utilities should make about 7 per cent to attract the capital needed for progress. Witnesses explained that the proposed increase would bring in only a small part of the estimated cost of needed improvements.

Senate Ups Wage Exemption

As passed by the Senate, the bill to increase minimum wages from 40 cents to 75 cents an hour, increases the exemption of small telephone exchange operators for exchanges having 500 to 750 stations or less. Because the House version of the bill continued the present 500-station limit, a conference will have to iron out the difference.

Financial News and Comment

By OWEN ELY

June Electric Net Up Twenty-one Per Cent

THE electric utility companies (class A and B utilities as reported by the Federal Power Commission) made an excellent showing in the month of June. Net income gained 21.7 per cent over last year, although total kilowatt-hour sales of electricity were up only 1 per cent, and operating revenues less than 6 per cent. The utilities seemed to benefit from the decrease in industrial sales, which were down 6 per cent; residential sales continued to gain at the rate of 13.5 per cent; and commercial were up 10 per cent.

The utilities were able to make a substantial saving in fuel in the month—about $5,000,000, or more than enough to offset the increase in labor costs and miscellaneous expenses. Despite increases of 15 per cent in taxes and 6 per cent in depreciation accruals, there was only a 3 per cent over-all increase in operating deductions. Operating income from nonelectric operating income gained 74 per cent (in dollars about $1,300,000) so that gross income increased 18 per cent. While interest charges were nearly 16 per cent over last year, this was partially offset by lower miscellaneous deductions, so that total charges increased only 9 per cent. The net result was an increase in net income of 21.7 per cent, and in the balance for common stock an estimated 26 per cent.

The separate quarterly statement for taxes, dividends, salaries, and wages issued by the FPC showed an increase in the June quarter in dividends on preferred stock of only 2.6 per cent while common stock dividends were 22.4 per cent higher. Only a negligible amount of preferred stock has been issued this year, while a substantial amount of common shares have been sold through subscription rights, etc. While there have been a few dividend increases, the major part of the gain in net income is required to support payments on the increased amount of common stock outstanding. Unfortunately up-to-date figures are not yet available on the capital structure of the electric utilities. However, for the month of June electric utility plant (less reserve) was about 12 per cent greater than last year, indicating that over-all capitalization must have increased correspondingly.

FOR the first half of 1949 net income of the electric power companies gained about 14 per cent over last year. The utilities during this period were especially favored by sharply lower prices for coal and particularly fuel oil. Now with the apparent renewal of an inflation psychology fuel oil prices are again rising. Also, renewed drought conditions may affect the third-quarter results. Hence figures for the month of June may prove somewhat exceptional.

The showing made in natural gas company reports to the FPC was somewhat off for June, a decrease of 10.2 per cent for net income despite a gain of 8.6 in

revenues. This result, which caused a little surprise, seemed due to the combination of a 14 per cent increase in cost of purchased gas, a 35 per cent gain in miscellaneous expenses, and a 44 per cent increase in interest in long-term debt. June is of course an abnormal month for the industry. Residential revenues gained only 1.6 per cent compared with 4.1 per cent for commercial and 5.9 per cent for industrial—these trends being just the reverse of those of the electric light industry.

For the twelve months ended June 30th, gas revenues were up nearly 17 per cent and net income 11 per cent. Net gas utility plant on June 30, 1949, was about $2.3 billion, a gain of 18 per cent over last year.

The 1948 "Statistics of Electric Utilities"

THE Federal Power Commission has promptly issued its 1948 edition of "Statistics of Electric Utilities in the United States." (Moody's 1948 Utility Manual appeared on almost the same date.) This is unusually prompt work for a government publication—considerably better, for example, than the Interstate Commerce Commission usually does with its bound "Statistics of Railways."

Attached to the press release announcing the publication are selected sheets giving the composite balance sheet and income statements for all class A and B electric utilities. Electric utility plant at the end of 1948 was $17,756,000,000, and after the reserves for depreciation and amortization net plant was $13,897,000,000. The gain in electric plant was 12 per cent, and in net plant 11 per cent. Depreciation reserve was 21.8 per cent of total plant compared with only 12.5 per cent a decade ago.

Because of last year's heavy debt financing, the ratio of debt to total capital was 49 per cent compared with 44 per cent in 1947. The preferred stock ratio dropped from 17 to 15 per cent and the common stock from 39 to 36 per cent. Notes and accounts payable (largely bank loans) increased to $544,000,000 against $393,000,000 in 1947 and an average of less than $200,000,000 during earlier years. There has been a great deal more common stock financing this year than in 1948, so that the increase in the debt ratio has probably been checked. However, the continued unpopularity of preferred stocks and the resulting deficiency in preferred stock financing make it necessary for common stock to shoulder the burden if the debt ratio is to be held down. Incidentally, the much quoted SEC formula of 50-25-25 should be revised to 50-15-35 to conform more closely to the national setup.

IT is interesting to note that in 1948, despite the increase in funded debt of over a billion dollars, fixed charges were slightly lower, due to the decrease in amortization and miscellaneous items and the increase in the construction interest credit. In 1948 preferred stock dividends increased only slightly, remaining substantially below the levels of 1938-45. Common dividends decreased slightly from 1947 but remained substantially above the wartime levels. This increase reflected the postwar gain in net income, the rate of pay out remaining close to the 70 per cent level.

Recent Utility Brochures and Analyses

THE recent approval of several holding company plans by the SEC or the Federal courts has again whetted the market appetite for holding company securities, and has stimulated the output of brokers' analyses of holding company securities.

Goldman, Sachs & Co. recently issued a 30-page brochure on American Power & Light. The company's plan, still before the SEC, provides for a distribution of assets between the preferred and common stocks on an 82-18 formula; the 82 per cent assigned to the preferred stockholders would be divided in the ratios of 6 to 5.05 for the $6 and $5 preferreds, respectively. Under the plan, American

Power & Light will be kept alive as a holding company for the three northwestern subsidiaries, but if Pacific Power & Light common stock can eventually be transferred to Washington Water Power the latter stock will be distributed and American will be dissolved.

Although the estimated value for the common stock of $14.08 is about 18 per cent above the recent price of 12, Goldman, Sachs stated, "we are not recommending the purchase of the present American Power & Light common because it seems to us probable that if any alteration is made by the Securities and Exchange Commission in the proportion of distribution between the preferred and common stocks, it would be in the direction of increasing the proportion of assets to be given the preferred and, therefore, decreasing the proportion to be given to the present common." It points out that a purchaser of the $6 preferred stock who wished to retain Texas Utilities (selling all other stocks received) could in effect buy the Texas stock for about half of the estimated value; on the other hand, should he wish to concentrate in Florida Power & Light he could buy the stock for about one-third the estimated value.

"DATA sheets" are given for eight subsidiaries, including the three operating companies in the Texas Utilities system, but excluding Portland Gas & Coke (the equity in which, after recapitalization, will probably be small). These statistics include (1) capital structure (per cent debt, preferred, and common); property account (gross plant, percentage of depreciation reserve, net plant, plant acquisition adjustments, and working capital); (2) a record of growth since 1940 as to customers, kilowatt-hour sales and revenues, with U. S. figures alongside company figures; (3) per cent of gross carried to net, and the share earnings for each year since 1940; (4) a breakdown of revenues, electric revenues, and power generated and purchased; (5) average residential rate and usage. There is also a one-page analysis of business, territory, and operations for each of the operating companies, with a longer description of Texas Utilities Company. This method of analysis and presentation should prove popular.

Argus Research Corporation (Lawrence Cooper) has issued a 2-page analysis on Ohio Edison, pointing out that the stock has been selling at about ten times the share earnings and that the yield is close to 7 per cent. "We consider this return," he states, "to be above average in view of the 32.8 per cent equity of the common stock in total capitalization, the stability of earnings in the last few years, and the fact that 14 per cent of revenues are carried through to the common, even after substantial charges for amortization of plant acquisition adjustments. . . . It is possible that some common shares may be sold in the next few years, but we believe that any such offering would be relatively small."

Dreyfus & Co. has issued a 5-page analysis of Central Public Utilities debenture 5½s 1952. It estimates the break-up value of the debentures (which have been selling recently around 21) at 35 to 50. This holding company owns all the securities of Consolidated Electric & Gas, which in turn controls four domestic and five foreign subsidiaries. The domestic include Central Indiana Gas, Upper Peninsula Power (60 per cent owned), Carolina Coach, and Southern Cities Ice. Foreign interests include subsidiaries in Haiti, Santo Domingo, Porto Rico, Manila, and in the Canary and Balearic islands (Spanish territory).

DISSOLUTION may be slow, because interest on the debenture 5½s (not paid for many years) is allowed as a tax deduction in the consolidated tax return, and saves the system an estimated $700,000 a year. In arriving at the estimates of break-up values of 35 and 50, Dreyfus & Co. capitalizes the value of tax savings resulting from the consolidated return and the interest deduction just mentioned. As these savings will disappear with the breakup of the holding companies, this procedure does not seem warranted—in fact a deduction of such

savings would seem in order except for the savings effected during the interim period. Such an adjustment would of course reduce the estimated values rather sharply. Details of the Dreyfus estimates are shown in the accompanying table.

Geyer & Co. recently issued a 4-page memo on Northern Indiana Public Service, which company issued rights (expiring August 29th) on a 1-for-7 basis. This utility, with revenues of $45,000,000, is located in the highly industrialized region around Gary, Fort Wayne, South Bend, and Hammond. Giving effect to the current stock offering, capitalization would be about 54 per cent debt, 23 per cent preferred stock (including a small convertible issue), and 23 per cent common equity. Earnings for the twelve months ended June 30th were $2.03 per share, and Geyer & Co. estimates that about 55 cents additional earnings on the increased amount of common stock may be obtainable when new plants are in full operation. Additional benefits should also be obtained from a larger supply of natural gas to be available next year. Regarding the big industrial load, it states that this is largely provided by purchased power and furthermore that if deliveries to the steel industry decline due to cutbacks in steel production, such power purchases may be reduced, thus helping to stabilize the earning power during recessions.

First Boston Corporation has issued a 6-page story on Kansas Power & Light, which company's stock is being distributed to stockholders of North American Company on September 1st. The company recently has been selling "when distributed" on the New York Stock Exchange at 16. Capital structure after adjustment for the recent sale of $10,000,000 bonds is 51 per cent debt, 21 per cent preferred stock, and 28 per cent common stock equity. Earnings for the twelve months ended June 30th, based on the new number of shares (2,143,158 of $8.75 par), were $1.52, and dividends paid were $1.11. The company will lose the benefit of consolidated tax returns (about 7 cents per share) but on the other hand will gain about an estimated 28 cents a share from a recent temporary rate increase; adjusted for these changes, share earnings would be about $1.73. Economies from new generating units may be offset in part by higher prices for natural gas, and interest on the new bonds. The study does not make clear whether dividends will continue at the $1.11 rate; the next dividend should be payable October 1st.

Truslow Hyde of Josephthal & Co. adopted a cautious attitude toward utility stocks several months ago, but in a bulletin dated August 9th he named "twelve heterogeneous utility stocks which we feel are attractively priced for one reason or another." The list included Consolidated Edison, El Paso Electric, Interstate Power, Northern States Power, Ohio Edison, Philadelphia Electric, Portland General Electric, Public Service of Colorado, Sioux City Gas & Electric, Southern California Edison, Southern Natural Gas, and Wisconsin Electric Power.

H. Hentz & Co. has issued 2-page memos on North American Company, Central Illinois Light Company (now traded "WD" on the Stock Exchange around 33), and United Corporation. Hentz estimated *pro forma* income on United Corporation's portfolio at 21 cents, including the income from new Niagara shares (after allowance for the distribution of one-tenth share of old Niagara for one share of United). Future proceeds of sales of utility holdings are to be invested in "special situations."

Goldman, Sachs & Co. has issued a 2-page memo on United Light & Railways. This and other studies have made good use of the projections of earnings and dividends for the operating companies in this system, contained in official exhibits filed with the SEC. They arrive at a break-up value of $35.65 a share for United Light & Railways based on the projected estimates of dividends for the subsidiaries as shown in the table on page 368.

First Boston Corporation has issued the eighth edition of "A Tabulation of

FOR EACH SHARE OF $6 PREFERRED TO BE EXCHANGED

	No. of Shares	*Est. Value Per Share*	*Total Est. Value*	*Est. Div. Per Share*	*Total Est. Income*
Florida P. & L.	1.242	24	$ 29.80	$1.40	$1.74
Minnesota P. & L.	0.304	27*	8.20	2.20*	.67
Montana Pr.	1.255	20	25.10	1.40	1.75
Texas Util.	2.231	18¼	40.71	1.20	2.67
Amer. P. & L. (new)	1.188	13	15.44	1.00	1.19
Estimated total per share			$119.25		$8.02

FOR EACH SHARE OF $5 PREFERRED TO BE EXCHANGED

	No. of Shares	*Est. Value Per Share*	*Total Est. Value*	*Est. Div. Per Share*	*Total Est. Income*
Florida P. & L.	1.045	24	$ 25.08	$1.40	$1.46
Minnesota P. & L.	0.256	27*	6.91	2.20*	.56
Montana Pr.	1.057	20	21.14	1.40	1.48
Texas Util.	1.878	18¼	34.27	1.20	2.25
Amer. P. & L. (new)	1.000	13	13.00	1.00	1.00
Estimated total per share			$100.40		$6.75

FOR EACH SHARE OF COMMON TO BE EXCHANGED

	No. of Shares	*Est. Value Per Share*	*Total Est. Value*	*Est. Div. Per Share*	*Total Est. Income*
Florida P. & L.	0.147	24	$ 3.53	$1.40	$0.21
Minnesota P. & L.	0.036	27*	.97	2.20*	.08
Montana Pr.	0.148	20	2.96	1.40	.21
Texas Util.	0.263	18¼	4.80	1.20	.32
Amer. P. & L. (new)	0.140	13	1.82	1.00	.14
Estimated total per share			$ 14.08		$0.96

*Based on actual market and dividend rate.

CENTRAL PUBLIC UTILITIES DEBENTURE 5¼s
EVENTUAL VALUE BASED ON 1949 ESTIMATED EARNINGS

	Estimated Earnings	*Times Earnings Ratios*	*Est. Minimum Value*	*Est. Maximum Value*
Central Indiana Gas	$840,000	10-13	$ 8,400,000	$10,720,000
Upper Peninsula Power	140,000	9-11	1,260,000	1,540,000
Carolina Coach	350,000	3-5	1,050,000	1,750,000
Southern Ice Co.	25,000	2-4	50,000	100,000
Cie d'Eolairage (Haiti)	100,000	3-4	300,000	400,000
Cia Elec. Santo Domingo	700,000	4-5	2,800,000	3,500,000
Porto Rico Gas	140,000	4-6	560,000	840,000
Philippine & Spanish Subs.			0	2,000,000
			$14,420,000	$20,850,000
Add 1949 earnings retained: $2,295,000				
Less paid on debt in 1949 500,000			1,795,000	1,795,000
Add estimated value of tax savings			2,100,000	2,800,000
			$18,315,000	$25,445,000
Less bank loan outstanding			3,650,000	3,650,000
Value for debenture 5¼/52			$14,665,000	$21,795,000
Equal per debenture bond			$348	$513

Electric Utility Operating Company Common Stocks." The number of electric utility companies included in the list has been increased to 81 as a result of holding company breakups. By the end of 1950, when holding company distributions will virtually be completed, it is estimated that another 10 or 15 companies may be added.

Among the companies increasing their dividend rates this year, it is pointed out, have been Boston Edison Company, Central Ohio Light & Power Company, Delaware Power & Light Company, El Paso Electric Company, Empire District Electric Company, Florida Power Corporation, Indianapolis Power & Light Company, Kansas Gas & Electric Company, Lake Superior District Power Company, Louisville Gas & Electric Company, Oklahoma Gas & Electric Company, Public Service Company of Indiana, South Carolina Electric & Gas Company, Southern California Edison Company, and Wisconsin Electric Power Company.

Amortization of Plant Acquisition Adjustments

As an aftermath of the campaign of the FPC to reduce plant account values to original cost, most *plant adjustments* (write-ups) have been charged off to surplus. It is almost uniformly the rule, however, to amortize over a 15-year period *plant acquisition adjustments* (Account 100.5, representing the amounts paid for properties in excess of the original construction cost). Most companies are anxious to keep this charge "above the line" to secure its recognition as a legitimate expense for rate-making purposes and in this they generally seem to have been successful. They have been less successful however, in having the item recognized as a deduction for tax purposes.

Wall Street analysts are interested in these charges because they represent a bookkeeping charge and not a cash drain on earnings. They may be considered in the nature of an extra depreciation charge. At any rate the amounts per share of common stock are an important factor in relation to share earnings and dividends. For example the fact that Southern Company, the new holding company which has taken over the southern properties of Commonwealth & Southern, has a charge of 20 cents in addition to the share earnings of $1.13 has a direct bearing on the important question of what increased dividend rate may be initiated by directors at their September meeting.

Jay Samuel Hartt, in his annual publication "Market Analysis of Common Stocks of Public Utility Companies," has listed these amounts per share. The accompanying table shows amounts in excess of 10 cents a share, with Mr. Hartt's explanatory footnotes:

Amounts Per Share Charged for Amortization Of Plant Acquisition Adjustments

Cen. Illinois E. & G.	$1.05ab
Cen. Illinois P. S.	0.17
Columbus & S. O. E.	0.13
Consol. Gas of Balt.	0.36
Delaware P. & L.	0.21
Duke Power	0.47
Idaho Power	0.21
Illinois Power	0.29ab
Indianapolis P. & L.	0.20c

	Per Oper. Co. Share			*Per Share of ULR*	
	Est. Div.	*Est. Yield*	*Est. Value*	*Distrib. Ratio*	*Est. Value*
St. Joseph L. & P.	$1.50	7.10%	$21.00	.10	$ 2.10
Kansas City P. & L.	1.60	6.40%	25.00	.60	7.80*
Iowa P. & L.	1.40	6.50%	21.50	.50	10.75
Iowa-Ill. G. E.	1.80	7.20%	25.00	.60	15.00
					$35.65

*After deducting estimated subscription price of $12 a share.

Iowa Pub. Ser.	0.26
Kansas G. & E.	0.14
Kentucky Util.	0.20
Lake Superior D. P.	0.60
Louisville G. & E.	0.30
Minnesota P. & L.	1.05d
Missouri Edison	0.10
Mountain States Power	0.15b
Northwestern P. S.	0.10b
Ohio Edison	0.42
Oklahoma G. & E.	0.36b
Penn. P. & L.	0.59
Pub. Ser. of Ind.	e
San Diego G. & E.	0.15
So. Carolina E. & G.	0.27f
Southern Ind. G. & E.	0.14
Southwestern Pub. Ser.	0.10bg
Utah P. & L.	0.23
Virginia E. & P.	0.19
Wiscon. P. & L.	0.47h

a—Per share common outstanding 12/31/48. b—Shown as charge to earned surplus in annual report. c—Shown in earnings statement in combination with depreciation. d—Includes $10,350 shown as operating expenses, $603,376 shown in income statement under "other deductions," and $70,000 included as a deduction of earned surplus. e—Beginning in 1950, charge will be 15 cents. f—Including $59,554 amortization of excess investment cost over book value of subsidiary which was shown as an income tax deduction in company's earning statement. In addition $500,000 was charged to surplus as an appropriation which if added to operating expense would reduce earnings per share of common stock by 41 cents. g—Per share stock outstanding 8/31/48. h—Includes $664,559 which was charged to surplus based on company's 1948 net income and is equivalent to 41¾ cents per share of common stock outstanding. In addition earned surplus was charged with $526,185 based on adjustments of prior years' income which is equivalent to 33 cents per share of common stock outstanding. This latter amount is not included in operating expense in this report.

Capital Formation and Sources Of Funds

THE National Industrial Conference Board recently completed an investigation of private capital formation and sources of funds in the years 1929, 1937, and 1948. Following are the figures:

	Billions		
	1948	*1937*	*1929*
Use of Capital			
Capital Expenditures	$25.5	$2.0	$6.3
Inventory Costs	6.5	2.3	1.6
Net Foreign Investment	1.9	—	.8
Discrepancy	.3	1.1	—
Total	$34.2	$5.4	$8.7
Sources of Funds			
Personal Saving	$12.0	$3.9	$3.7
Undistributed Corporation Profits	11.1	—	3.1
Charges to Current Expense	2.7	.8	.9
Government Surplus	8.4	.7	1.0
	$34.2	$5.4	$8.7

The figures were obtained from the Department of Commerce reports. Personal savings are taken as the excess of personal income over personal consumption expenditures, taxes, and related payments to government. Thus, these savings would include life insurance premiums which are now far larger than in 1929.

DIVIDEND-PAYING ELECTRIC UTILITY STOCKS

		8/23/49 Price About	*Indicated Dividend Rate*	*Approx. Yield*	*Share Earnings Cur. Period*	*Share Earnings Prev. Period*	*% Increase*	*Price-Earn. Ratio*	*% of Rev. Avail. For Com. Stock*
Revenues $50,000,000 or over									
B	Boston Edison	43	$2.80	6.5%	$2.90d	$2.75	5%	14.8	11%
S	Cincinnati G. & E.	30	1.40	4.7	3.14je	2.74	15	9.6	13
S	Cleveland Elec. Illum.	41	2.20	5.4	2.59je	2.65	D2	15.8	11
S	Commonwealth Edison	27	1.50	5.6	1.91je	1.81	5	14.1	10
S	Consol. Edison of N. Y.	25	1.60	6.4	2.37je	2.06	15	10.5	7
C	Consol. Gas of Balt.	66	3.60	5.5	4.44je*	4.43	—	14.9	8
S	Consumers Power	32	2.00	6.3	2.56ju*	2.75	D7	12.5	13
S	Detroit Edison	22	1.20	5.5	1.83ju	1.39	32	12.0	8
C	Duke Power	78	4.00	5.1	7.31je	6.37	15	10.7	12
S	Northern States Power	10	.70	7.0	1.02je	.89	15	9.8	13
S	Pacific G. & E.	33	2.00	6.1	2.13je	2.42	D12	15.5	8
S	Penn Power & Light	19	1.20	6.3	2.02ju	2.15	D6	9.4	9
S	Philadelphia Elec.	23	1.20	5.2	1.78je	1.62	10	12.9	12
S	Pub. Serv. E. & G.	24	1.60	6.7	2.13m	—	—	11.3	8

	(Continued)	8/23/49 Price About	Indicated Dividend Rate	Approx. Yield	Share Earnings Cur. Period	Share Earnings Prev. Period	% Increase	Price-Earn. Ratio	% of Rev. Avail. For Com. Stock
S	So. Calif. Edison	33	2.00	6.1	2.39je	1.79	34	13.8	7
S	Virginia Elec. Power	18	1.20	6.7	1.58ju*	1.47*	7	11.4	9
S	Wisconsin Elec. Power	18	1.10	6.1	1.88je	1.65	14	9.6	8
	Averages			6.0%				12.3	
	Revenues $25-$50,000,000								
S	Carolina P. & L.	30	$2.00	6.7%	$3.60ju	$3.17	14%	8.3	13%
O	Central Ill. P. S.	16	1.20	7.5	1.78je	1.78	—	9.0	15
O	Connecticut L. & P.	57	3.25	5.7	3.62ju	3.61	—	15.7	12
S	Dayton P. & L.	29	1.80	6.2	2.97je	2.24	33	9.8	13
S	Houston L. & P.	46	2.20	4.8	3.46ju	3.56	D3	13.3	16
S	Illinois Power	33	2.00	6.1	3.37ju	2.92	15	9.8	15
S	Louisville G. & E.	30	1.80	6.0	3.33je	—	—	9.0	12
O	New Orleans Pub. Ser.	34	2.25	6.6	2.89a	2.66	9	11.8	8
S	N. Y. State E. & G.	50	3.40	6.8	4.51ju	3.98	13	11.1	8
O	Northern Ind. P. S.	16	1.20	7.5	2.32je	2.04	14	6.9	11
S	Ohio Edison	31	2.00	6.5	2.97ju*	3.15	D6	10.4	14
O	Ohio Public Ser.	16	1.12	7.0	1.51d	1.38	9	10.6	15
S	Potomac Elec. Power	15	.90	6.0	1.10je	1.05	5	13.6	11
S	Pub. Ser. of Colo.	43	2.20	5.1	4.68m	3.69	27	9.2	14
O	Pub. Serv. of Ind.	25	1.60	6.4	2.50je	2.47	1	10.0	17
O	Puget Sound P. & L.	14	.80	5.7	1.58je	1.75	D10	8.9	11
	Averages			6.3%				10.5	
	Revenues $10-$25,000,000								
O	Atlantic City Elec.	17	$1.20	7.0%	$1.51je	$1.36	11%	11.3	12%
S	Birmingham Elec.	10	—	—	1.09je	.97	12	9.2	4
O	Central Ariz. L. & P.	11	.70	6.4	1.25ju	1.17	7	8.8	13
S	Central Hudson G. & E.	8	.52	6.5	.57je	.50	14	14.0	6
O	Central Ill. E. & G.	20	1.30	6.5	2.09je	2.57	D19	9.6	11
O	Central Illinois Lt.	33WD	2.20E	6.7	2.99je	2.85	5	11.0	14
O	Central Maine Power	16	1.20	7.5	1.66ju	1.13	47	9.6	15
S	Columbus & S. Ohio E.	21	1.40	6.7	2.23je	2.06	8	9.4	13
O	Connecticut Power	35	2.25	6.4	1.90m	2.29	D17	18.4	11
S	Delaware P. & L.	21	1.20	5.7	1.88je	1.54	22	11.1	12
S	Florida Power Corp.	16	1.20	7.5	1.73je	1.36	27	9.2	11
S	Gulf States Util.	19	1.20	6.3	1.70je	1.65	3	11.2	17
C	Hartford Elec. Light	46	2.75	6.0	2.76m	2.83	D3	16.7	14
S	Idaho Power	33	1.80	5.5	2.56je	2.57	—	12.9	19
S	Indianapolis P. & L.	27	1.60	5.9	3.31m	2.69	23	8.2	14
O	Interstate Power	8	.60	7.5	1.00je	—	—	8.0	13
O	Iowa Pub. Ser.	16	1.00	6.3	1.77je	1.40	26	9.0	9
O	Kansas Gas & Elec.	27	2.00	7.4	3.07ju	2.84	8	8.8	12
S	Kansas Power & Light	16WD	1.00E	6.3	1.52je	1.19	28	10.5	14
O	Kentucky Utilities	12	.80	6.7	1.62je	1.24	31	7.4	12
O	Minnesota P. & L.	26	2.20	8.5	3.12d	2.88	8	8.3	14
C	Mountain States Power	29	2.50	8.6	3.73je	5.02	D26	7.8	12
O	Oklahoma G. & E.	34	2.40	7.1	3.77	3.66	3	9.0	14
O	Portland Gen. Elec.	23	1.80	7.8	2.10je	2.76	D24	11.0	14
O	Public Ser. of N. H.	23	1.80	7.8	1.63ju	1.54	6	14.1	12
O	San Diego G. & E.	13	.80	6.2	.83je	1.00	D17	15.6	6
S	Scranton Elec.	13	1.00	7.7	1.05je	1.24	D15	12.4	14
S	So. Carolina E. & G.	9	.60	6.7	1.16je	.87	33	7.8	10
O	Southwestern Pub. Ser.	28	2.00	7.1	2.65je	2.38	11	10.6	22
C	Tampa Electric	30	2.00	6.7	2.36je	2.15	10	12.7	12
O	United Illum.	44	2.25	5.1	2.60d	2.56	2	16.9	16
C	Utah Power & Light	24	1.60	6.7	2.66ju	2.43	9	9.0	16
O	Western Mass. Cos.	29	2.00	6.9	2.30d	2.41	D5	12.6	12
O	Wisconsin P. & L.	15	1.12	7.5	1.39je	1.75	D21	10.8	11
	Averages			6.8%				11.0	

(Continued)		8/23/49 Price About	Indicated Dividend Rate	Share Earnings Approx. Yield	Cur. Period	Prev. Period	% Increase	Price-Earn. Ratio	% of Rev. Avail. For Com. Stock
Revenues $5-$10,000,000									
C	California Elec. Pr.	7	$ .60	8.6%	$ .76je	$ .71	7%	9.2	10%
O	Calif. Oregon Power	23	1.60	7.0	3.10ju	2.66	17	7.4	17
O	Central Vermont P. S.	7	.68	9.7	.59ju	.31	90	11.9	6
C	Community Pub. Ser.	31	2.00	6.5	4.08je	3.42	19	7.6	12
O	El Paso Electric	29	2.00	6.9	3.21je	2.79	15	9.0	20
S	Empire Dist. Elec.	17	1.24	7.3	2.10je	2.15	D2	8.1	11
O	Gulf Public Service	11	.80	7.3	1.46my	1.30	12	7.5	13
O	Iowa Southern Util.	15	1.20	8.0	2.36je	1.55	52	6.4	8
O	Lawrence G. & E.	35	2.60	7.4	2.41d	2.48	D3	14.5	9
O	Lynn G. & E.	78	5.00	6.4	5.02d	5.87	D14	15.5	16
O	Madison Gas & Elec.	26	1.60	6.2	2.00d	1.92	4	13.0	12
O	Michigan Gas & Elec.	15	1.20	8.0	2.24je	1.99	13	6.7	9
O	Missouri Utilities	13	1.00	7.7	1.98je	1.92	3	6.6	12
O	Northwestern P. S.	10	.80	8.0	1.22je	1.24	D2	8.2	11
O	Otter Tail Power	18	1.50	8.3	1.62d	1.58	2	11.1	9
C	Penn Water & Power	35	2.00	5.9	4.81d	4.32	11	7.1	24
O	Public Ser. of N. Mexico	18	1.00	5.6	1.74je	1.51	15	10.3	14
O	Rockland L. & P.	9	.52	5.8	.54d	.68	D21	16.7	12
O	Sioux City G. & E.	32	2.00	6.3	3.10je	3.38	D8	10.3	10
O	Southern Ind. G. & E.	21	1.50	7.1	2.15je	2.26	D5	9.8	15
O	Tide Water Power	7	.60	8.6	.91ju	.88	4	7.7	7
O	Western Lt. & Tel.	22	2.00	9.1	2.31je	2.19	5	9.5	10
	Averages			7.4%				9.7	
Revenues under $5,000,000									
O	Arizona Edison	16	$1.00	6.3%	$2.54je	$1.54	65%	6.3	8%
O	Arkansas Missouri P.	12	1.00	8.3	2.20je	1.89	16	5.5	14
O	Bangor Hydro Elec.	23	1.60	7.0	2.39je	2.86	D16	9.6	15
O	Beverley G. & E.	32	2.40	7.5	2.10d	2.19	D4	15.2	6
O	Black Hills P. & L.	15	1.20	8.0	1.86a	1.60	16	8.1	13
O	Calif. Pacific Util.	29	2.40	8.3	3.73my	4.84	D23	7.8	9
O	Central Louisana El.	27	1.60	5.9	3.78je	1.92	97	7.1	18
O	Central Ohio L. & P.	24	1.60	6.7	3.21je	2.84	13	7.5	10
O	Citizens Utilities	9	.70&Stk	7.8	1.94je	1.44	—	4.6	12
O	Colorado Central P.	23	1.80	7.8	2.43je	2.76	D12	9.5	11
O	Concord Electric	32	2.40	7.5	2.17d	2.30	D6	14.7	11
O	Derby G. & E.	20	1.40	7.0	1.25d	1.47	D15	16.0	10
O	East Coast Electric	16	1.20	7.5	1.44je	1.85	D22	11.1	14
O	Fall River Elec. Lt.	50	3.40	6.8	3.55d	3.32	7	14.1	16
O	Fitchburg G. & E.	39	2.75	7.1	2.68d	2.85	D6	14.6	11
O	Frontier Power	4	.20	5.0	.84d	1.14	D26	4.8	10
O	Haverhill Elec.	22	.95	4.3	1.10d	1.48	D26	20.0	6
O	Lake Superior Dist. P.	20	1.40	7.0	1.95je	2.42	D19	10.3	5
O	Lowell Elec. Lt.	37	3.00	8.1	2.36d	2.62	D10	15.7	9
C	Maine Public Service	12	1.00	8.3	1.69je	1.06	59	7.1	9
O	Michigan Public Ser.	18	1.40	7.8	1.97m	1.38	43	9.1	8
O	Missouri Edison	8	.70	8.8	.89je	1.00	D11	9.0	9
C	Missouri Public Ser.	28	1.60	5.7	3.92d	4.21	D7	7.1	13
O	Newport Elec.	23	1.80	7.9	2.45my	2.66	D8	9.4	11
O	Sierra Pac. Power	22	1.60	7.3	1.95je	2.04	D4	11.3	13
O	Southern Colo. Pr.	10	.70	7.0	1.20my	1.21	—	8.3	14
O	Southwestern El. Ser.	11	.80	7.3	1.36my	1.18	15	8.1	14
O	Tucson Gas, E. L. & P.	18	1.20	6.7	2.03je	1.75	16	8.9	16
	Averages			7.2%				10.0	
	Averages, five groups			6.8%				10.6	

B—Boston Exchange. C—Curb Exchange. O—Over-counter or out-of-town exchange. S—New York Stock Exchange. E—Estimated. WD—When delivered. *Based on average number of shares outstanding. a—April. ag—August. d—December. f—February. j—January. m—March. my—May.—je—June. ju—July.

What the State Commissioners Are Thinking About

Excerpts and digests from the opinions expressed in reports and addresses at the annual convention of the National Association of Railroad and Utilities Commissioners in Cleveland, Ohio, from August 8th to 11th, 1949.

On Corporate Finance

"THE truth may be that utilities in general have been reluctant to increase the amounts of their outstanding common stocks, for well-known reasons, and therefore have made no real effort to market more than token amounts of additional common stock. It is believed by your committee that if a basically sound utility with good prospects made the proper effort, it could sell substantial amounts of its common stock to its existing stockholders, to its customers and employees, and to the smaller investors in its service area. Since those classes of investors need more time than the larger investors in which to make a decision on what is to them an important financial matter, the stock-subscription period should be longer than in the case of the usual underwritten stock distribution. . . .

"The committee desires to point out, however, that the success of equity financing by public utilities will depend in no small part upon adequate and reasonable net earnings available for common stock dividends. This interest must be considered together with the interest of the consumer. Therefore, it is incumbent upon regulatory authorities to permit rate increases by public utilities where warranted, and without unreasonable delay, to meet rising costs of plant construction and operation, to the end that the financial condition of the utility industry may not be impaired. For it is only by a financially sound enterprise that the interests of its customers, wage earners, and stockholders may be adequately served. . . .

"Public utility financing in the first five months of 1949, translated to annual bases, compared as follows to that of 1948: total financing, 71.8 per cent; for refunding, 125 per cent; and for new capital, 69.4 per cent."

—REPORT *of the Committee on Corporate Finance, Harold A. Scragg of Pennsylvainia, chairman.*

On Federal Aid to Small Telephone Companies

"To meet this [small telephone company financing] situation, it seemed to our commission there were but two choices: first, the obtaining of credit by the small telephone

company from some private source when such credit was justified, or, second, Federal legislation which would permit the Federal government to do the same thing in the telephone industry that it has done for the users of electricity under the rural electrification plan. I might say in passing that in New York we have only six rural electrification projects, all in the territory of one company, and all created sometime ago. Having seen what one Federal agency—one not connected with the telephone industry—has attempted to do in its effort to destroy state regulation, we have a justified fear of intrusion by any new Federal regulatory agent within our state. We fear the Greeks even when they bear gifts."

—SPENCER B. EDDY,
Member, New York Public Service Commission.

"THIS new Poage Bill . . . as reported [by House Rules Committee] not only contains the NARUC amendment but also includes another provision, not suggested by the association, which is also designed to preserve state jurisdiction. This additional provision, which was added to '§ 201' of the amended REA Act, reads:

"'. . . nor shall such loan be made in any state which now has or may hereafter have a state regulatory body having authority to regulate telephone service and to require certificates of convenience and necessity to the applicant unless such certificate from such agency is first obtained.'

"Commenting on this additional amendment in Bulletin 45-1949, issued by our Washington office, General Solicitor Hamley said, in part:

"'According to the House committee report (Report No. 246, 81st Congress, 1st Session), 31 state commissions exercise certificate authority with respect to telephone service, but in only 15 of these states is such authority applicable to mutual or coöperative companies. This means that, with respect to 33 states which do now confer certificate authority over mutuals and coöperatives in their respective regulatory commissions (including Delaware, Iowa, and Texas, which have no state telephone regulation), the REA would, under present state laws, be at liberty to make loans to mutuals and coöperatives for the purpose of duplicating, or competing with, the services offered by existing private companies. Nevertheless, the amendatory language places it within the power of each state, by enacting appropriate legislation, to prevent such duplication or competition. In effect, then, Congress has left this question of duplication and competition as a matter of local policy to be decided by each state, rather than to lay down a national policy either for or against duplication and competition.' "

—REPORT *of the Committee on Legislation. H. Lester Hooker of Virginia, chairman.*

"THE association has never taken a position respecting the merits of legislation which would authorize the Rural Electrification Administration, or any other Federal agency, to make loans to telephone companies and coöperatives. However, the association has favored amendments to the several bills on the subject which have been introduced in Congress, for the purpose of safeguarding state regulatory jurisdiction."

—REPORT *of the Committee on Legislation. H. Lester Hooker of Virginia, chairman.*

"REGULATION and management policies should always give first consideration to the consumer or telephone subscriber. The interest of the subscriber demands that the plant be properly maintained, the financial stability of the companies preserved, and that regulation be consistent with the ever-changing economic conditions. Government ownership of telephones could well be an opening wedge leading to Socialism or a more dictatorial form of government. If we in the field of regulation do our jobs well we will contribute to the preservation of our system of private enterprise, and our existing form of government. If we fail to provide adequate telephone service at reasonable rates, we will encourage government ownership and the ultimate destruction of our system of private ownership under regulation."

—WALTER F. ROBERTS,
Chairman, Nebraska State Railway Commission.

On Federal Intervention

"THE first of these [salient facts and considerations in Indiana Gas Case] . . . is that Indiana Gas [& Water Co., Inc.] is now subject to complete and effective regulation by the Indiana commission, including the regulation of rates, service, accounts, security issues, and pipe-line extensions and connections. The Indiana commission approved the construction of the very stub lines which the Federal Power Commission now looks to in its effort to establish Federal jurisdiction. The Indiana commission approved the security issues which financed the construction of these same lines. The cost of constructing these lines is now a part of the rate base of Indiana Gas, upon the basis of which the Indiana commission regulates all of that company's rates. There is no regulatory void or gap of any kind or character requiring Federal intervention in the affairs of the company.

"The second fact to be noted is that, even if the Federal commission can establish jurisdiction over Indiana Gas [& Water Company], it will serve no useful purpose. This is true since that company sells no gas at wholesale for resale, and its retail sales to ultimate consumers are specifically exempt from Federal regulation under the Natural Gas Act.

"The third consideration to be noted is that classification of Indiana Gas as a 'natural gas company' under the Natural Gas Act would result in duplicate and overlapping state and Federal regulation. Such duplication and overlapping would be burdensome upon ratepayers who must pay the cost of public utility operations; would be wasteful of public funds; would confuse and impede the efficient and effective administration of state regulatory laws; and would be wholly unnecessary.

"The fourth, and perhaps paramount, consideration is that the Indiana Gas Case is not to be regarded as an isolated instance of Federal Power Commission encroachment. There are said to be 14 other local distributing companies in the state of Indiana which operate stub lines under the same circumstances. The number of local distributing companies throughout the nation which would become subject to duplicate Federal regulation, if this precedent is established, would undoubtedly run into the hundreds. One important example of how this principle would be used to extend Federal commission jurisdiction is to be found in the presently pending Consolidated Edison Case, FPC Docket Nos. G-1167 et al. . . .

"This is a case which will probably go to the United States Supreme Court unless the jurisdictional issues are fully disposed of in the East Ohio Case already pending before that court.

"In the event that the state commissions lose this fight before the commission and in the courts, the only recourse, and perhaps the one which ought to be pursued in any event, is the enactment of an amendment to the Natural Gas Act which will spell out, in still more precise terms, the intention of Congress that the Federal Power Commission is to keep its hands off of local distributing companies. Three bills, HR 4001, HR 4028, and S 1831, already pending in Congress, would accomplish this result."

—FREDERICK G. HAMLEY,
General solicitor, National Association of Railroad and Utilities Commissioners.

"AT the committee meeting on April 14th, there was adopted a proposal to amend § 1342 of the Judicial Code of the United States (28 USC 1342) to read:

"'The district courts shall not have jurisdiction to enjoin, suspend, or restrain the operation of, or compliance with, or affect in any way by judicial declaration or determination, any order, decision, or action made, rendered or taken by a state administrative agency, regulatory or rate-making body, or any such agency or body of a political subdivision of a state, affecting a public utility, where:

"'(1) The order, decision, or action does not interfere with interstate commerce; and,

"'(2) Such order, decision, or action has been made, rendered, or taken after reasonable notice and hearing; and,

"'(3) A plain, speedy, and efficient remedy may be had in the courts of such state.

"'The expression "interfere with interstate commerce," as used in this section, means the casting of an intolerable burden upon such commerce.' "

—REPORT *of the Committee on Regulatory Procedure, Everett C. McKeage of California, chairman.*

On Federal-State Coöperation

"WITH respect to the inadequacy of present procedures in conveying information to the state commissions regarding the views of panel members, a brief description of the present practice is also in order.

"The [Interstate Commerce] Commission, in its reports in these cases, customarily lists the names of the coöperating panel; sometimes indicates that it has had 'the benefit of their counsel'; and usually indicates whether or not the members of the panel concur in the report of the [Interstate Commerce] Commission.

"In three cases . . . the commission report gives no indication of the views of the panel members. In one case the dissenting view of one panel member is summarized (270 ICC 93, 102), and in another case a brief paragraph prepared by the panel, setting forth its views, is incorporated in the report (266 ICC 537, 613). (In the Class Rate Case, ICC No. 28300, the commission's report contains a full-page footnote setting forth the dissenting views of Commissioner Meins of Massachusetts, a member of the coöperating panel (262 ICC 447, 706).)"

—REPORT *of the Committee on Coöperation between State and Federal Commissions, Nat B. Knight, Jr., of Louisiana, chairman.*

"THE prime objective of coöperative procedure is, therefore, to provide methods whereby both Federal and state commission rate reports and orders will reflect full consideration of both national and local problems and conditions, to the end that there will be maintained 'a transportation system which will in all respects best meet the public needs.'

"If that objective is not attained, these Fed-

eral and state rate reports are likely to be ill-balanced with respect to either the national or local needs; an opportunity to minimize numerous unnecessary disparities and conflicts between Federal and state rate authorizations is lost; expensive and time-consuming §13 cases, which could be avoided, are permitted to develop; and the Federal rate report and order, which customarily goes to the state commissions for consideration in connection with paralleling intrastate cases, carries with it wholly unjustified indicia of agreement and support by the coöoperating panel.

"It is obvious that these undesirable results cannot be avoided and the real objective of coöperative procedure cannot be attained unless there has been a real effort to correlate Federal and state commission thinking prior to issuance of the Federal report, and unless, at the time such report is issued, or subsequent thereto, the individual state commissions are fully advised of the views of the coöperating panel.

"The coöperative practices actually followed, in our opinion, fail in both of these respects. The effort to correlate Federal and state commission thinking prior to issuance of the Interstate Commerce Commission report has not been effective; and the means now employed to advise the state commissions of the views of the coöperative panel are inadequate."

—REPORT *of the Committee on Coöperation between State and Federal Commissions, Nat B. Knight, Jr., of Louisiana, chairman.*

"WE do not feel that the mere statement, in the [Interstate Commerce] Commission report, that the panel members 'concur in' or 'differ with' the views stated in the report, adequately advises the individual state commissions of the views of the panel. Nevertheless, this is all that is required of the commission by the coöperative agreement, which provides as follows:

"'If a report of the Federal commission will accompany any order to be made in said proceeding, the Federal commission shall state therein the concurrence or nonconcurrence of said coöperating committee in the decision or order of said Federal commission.' (1937 NARUC Proceedings, page 66.)"

—REPORT *of the Committee on Coöperation between State and Federal Commissions, Nat B. Knight, Jr., of Louisiana, chairman.*

On Financing Small Telephone Companies

"WE determined to see to it that the money necessary to provide adequate [telephone] service was obtained from private sources.

"It would be too lengthy and serve no useful purpose to describe the negotiations which led up to the final result. We enlisted the governor's aid and we frankly presented the problem to the various people interested.

"The result is that a commitment has been made by a group of upstate banks to loan for construction purposes to any telephone company in the state, unable to obtain funds from other sources, sufficient moneys for their need provided the loan is approved by the public service commission."

—SPENCER B. EDDY,
Member, New York Public Service Commission.

"THE two most important problems that confront this [the electric power] industry today are those of new capital financing and the acquisition of material and equipment. The latter has eased in recent months. Financing costs in the postwar period have remained relatively firm.

"The industry has been comparatively free from the demand for higher rates which has been generally prevalent among most utilities. This is true principally because its per cent of dollar revenue absorbed by labor costs has remained low. The increased cost, however, of new installations is beginning to reflect itself in the ability of electric utilities to sustain their earning position."

—JUSTUS F. CRAEMER,
Retiring president, National Association of Railroad and Utilities Commissioners.

On Interim Rate Regulation

"REFERENCE might first be made to those decisions which have discussed the question whether they possess adequate authority to grant rate increases on an interim basis pending further hearings in the same proceeding. In states where special statutory provisions permit such action, questions arising as to the proper interpretation of those statutory requirements have occupied the attention of the commissions to a degree which might lead to the inquiry whether procedural controls of such a nature serve a useful purpose. Even when the statute provides that an emergency must be found to exist before an interim rate increase may be authorized, it appears in almost all decisions analyzed to have been held by the

commission that the terms of the statute are satisfied when the evidence indicates the utility has and will continue to receive an inadequate return, and final judgment with respect to reasonable definitive rates must be delayed until further evidence is received."

—REPORT *of the Committee on Progress in the Regulation of Public Utilities, Ira H. Rowell of California, chairman.*

"COMMISSIONS in states that do not have such specific statutory requirements upon the subject do not appear to have found their authority inadequate to afford a utility interim relief. The Florida Railroad and Utilities Commission, *Re* Southern Bell Teleph. & Teleg. Co., November 12, 1948, first denied the company's motion for immediate rate increases, under bond, it stating that the statutes of that state contemplate a full and complete hearing. But in a decision rendered in the following month, after further hearings, it authorized increased rates on a temporary basis, although it noted that many issues were presented which demanded further consideration.

"The Michigan Public Service Commission, *Re* Michigan Bell Teleph. Co., June 30, 1949, and also the California Public Utilities Commission, *Re* Pacific Teleph. & Teleg. Co., February 23, 1949, although no special statutory provision so authorized, both declared they had the power to do so when emergency conditions justified. In the California case the commission said that 'we find from the evidence in the proceeding that the earnings of applicant are such that it finds itself in a serious financial position, which constitutes an emergency that must be relieved.'"

—REPORT *of the Committee on Progress in the Regulation of Public Utilities, Ira H. Rowell of California, chairman.*

On Interstate-Intrastate Jurisdiction

"IN view of these facts [in pending gas case], the jurisdictional question involved in the Indiana Gas Case may be stated as follows:

"Is a company, which owns and operates facilities located only in a single state for the sole purpose of serving its own ultimate consumer customers, nevertheless a 'natural gas company' under the Natural Gas Act where, for the purpose of said business, such company carries through its facilities, between a point of connection with an interstate pipe-line company and the cities and towns in which local distribution is completed, natural gas which has been imported into the state by such pipe-line company?

"It will be observed that this is the identical question which is involved in East Ohio Gas Co. *v.* Federal Power Commission, now on appeal before the United States Supreme Court. The only substantial difference in facts between the two cases is that, in the East Ohio Case, the company received the out-of-state gas at high pressure and continued to transport it at high pressure, to or near the various city gates. In the Indiana Gas Case, however, the interstate pipe-line companies stepped down the pressure before delivering the gas to Indiana Gas."

—FREDERICK G. HAMLEY, *General solicitor, National Association of Railroad and Utilities Commissioners.*

On Electric Rates

"IN the year 1948 there was a reversal of the 25-year downward trend in typical electric bills in large cities as reported by the Federal Power Commission. This report, covering 206 cities, showed:

"Reductions, some considerable, for 12 cities.

"No changes for 141 cities.

"Decreases in some bills, increases in others, in 12 cities.

"Increases only for 41 cities."

—REPORT *of the Committee on Rates of Public Utilities, Paul E. Weiland of Ohio, chairman.*

On Gas Rates

"THE substance of the court's decision [in the Interstate Natural Gas Case] is that in making distribution of impounded funds in natural gas pipe-line rate cases, the circuit court of appeals should go back and reconstruct the rate picture as it would have been had there been no stay of the rate reduction ordered by the Federal Power Commission. The Douglas opinion [Interstate Case] says that the court below should call upon the

Federal Power Commission and the state commissions involved for advice in this respect, and the court can, by this means, determine wherein the equities lie. I take this to mean that if the utilities purchasing natural gas from a pipeline were making a fair return during the impoundment period, then in equity the utilities have no claim to the impounded moneys and the distribution should be to the ultimate consumers who would have gotten a rate reduction at the time the impoundment commenced had there been no stay."

—JOHN P. RANDOLPH,
Member, Missouri Public Service Commission.

"IN some areas consideration is being given to the use of selective pricing as a method of restraining the use of gas for space heating. It has been proposed that gas for space-heating use be priced in such a way as to curtail the demand by customers for such service. Because of the competition in fuel prices which normally prevails, it is quite probable that the demand for gas space heating can be controlled by selective pricing. However, the effect of such a policy upon the rate of return earned by the utility cannot be ignored. Under regulation, it would not be sound public policy to permit the utility to earn an excessive rate of return on space-heating business, even though the avowed purpose of the pricing policy was to restrain the demand for space-heating service. Because of its low annual load factor, the utility's rate of return may be higher with a low volume of space-heating business than it would be with a greater volume. In such cases a low rate has an effect opposite from that usually obtained. It may produce a greater volume of business, but at the same time decrease the rate of return as such added volume is acquired. It appears that considerable rate experimentation will be required in order to obtain a satisfactory solution to this very difficult problem."

—H. J. O'LEARY,
Chief, rates and research department, Wisconsin Public Service Commission.

On Gas Service

"THE gas industry in the United States has experienced a remarkable growth since the beginning of the war period. In terms of customers, the natural gas utilities have shown an increase of 44 per cent between 1940 and 1947, with 10,189,000 connections as an average for the year 1947. Customers for the other classes of gas utilities reflected a much lower increase, yielding an over-all growth for the entire gas industry of about 22 per cent, with 21,419,000 connections on the average for the year 1947.

"The increase in volume of sales and revenue during the comparable period has been even more pronounced with the natural gas industry showing a 79 per cent increase in sales to a total of 2.515 trillion cubic feet. Other classes of gas utilities show a somewhat lesser increase to yield a total increase in volume of sales for the entire gas industry of about 71 per cent, with sales of 3.129 trillion for the year 1947.

"Revenues received by the natural gas industry in 1947 approximated $848,000,000, representing an increase of 80 per cent over the year 1940. Revenues received by the other classes of gas utilities increased to a much lesser extent, making for an over-all increase of 60 per cent for the entire industry, reflecting total revenues of about $1,396,000,000."

—JUSTUS F. CRAEMER,
Retiring president, National Association of Railroad and Utilities Commissioners.

On Rate Increases

"REPLIES were received from 28 states and the District of Columbia indicating a general interest and concern with this [interstate-intrastate toll rate] problem. The majority of replies indicated that rates for exchange and state toll service had been established to produce a return on intrastate services in total, although several advised that the two services were considered separately. . . .

"All replies with one exception concluded that intrastate toll rates should be at the same general level as interstate toll rates. However, a large number of states felt that when added revenue is found to be required some amount should be provided by increasing toll rates. A number expressed the view that the disparity should be reduced by adjustments in the interstate schedule.

"With few exceptions the responses favored extended area service in order to reduce the intrastate toll revenue requirements where feasible. A majority suggested that the non-optional basis was preferred, in order to reduce the over-all cost of providing this type of service, but some expressed the view that optional service permitted subscribers to choose the extent of service desired.

"Seventeen states advised that adverse public reaction from the disparity in toll rates had been experienced, although several indicated

the criticism was not severe, and six advised of no reaction. A number felt that criticism would be much more severe if the public were fully informed as to the differentials between state and interstate toll rates, and several commented that the divergence was improper and not justified."

—REPORT *of the Special Committee Coöperating with the Federal Communications Commission in Studies of Telephone Regulatory Problems, Matt L. McWhorter of Georgia, chairman.*

"IT is significant that to date the volume of service now being rendered by the utilities of the nation, as compared with that of the prewar years, transcends the increase in industrial production. This has been accomplished by increases to plant and property at prices almost double those of the prewar years, with increases in wages to almost twice the prewar rates, and these two factors supply the answer as to the absence of a commensurate response on the last line of the income statement.

"As a result, regulatory commissions are today confronted with an ever-increasing number of petitions for upward revisions in rates."

—REPORT *of the Committee on Rates of Public Utilities, Paul E. Weiland of Ohio, chairman.*

"IN a fast-expanding postwar economy the utilities of our nation are the fastest growing of all industries and have as of today a larger program of additional expansion than any other segment of industry. This expansion must be made at prices approximately double those of prewar. Postwar prices for expansion affect utilities much more than the average industry because of the low rate of capital turnover in the utility industry. In the automotive industry one-half dollar invested in production facilities will produce one dollar of annual sales. One dollar invested in production facilities in the steel industry will produce one dollar of annual sales. It requires about four and one-half dollars of investment in utility industry to produce one dollar of sales and if expansion of plant is to continue at postwar prices, with the level of rates remaining the same, that ratio will increase."

—REPORT *of the Committee on Rates of Public Utilities, Paul E. Weiland of Ohio, chairman.*

"THE illustrations of selective pricing which have been considered point up the desirability of some modification of traditional rate policies. For many years it has been the generally accepted practice in the design of utility rates to adapt them as nearly as possible to the curve of experienced costs. In effect, rate making was based largely on a static process of determining costs under existing load conditions. To meet competitive conditions and more effectively to promote desirable loads it has become increasingly necessary to emphasize rate structures as a medium for selective pricing. If utilities expect to derive maximum benefits from the economies of mass production, rate schedules should be considered as an integral part of a merchandising problem. Under a policy of selective pricing, within the framework of appropriate antidiscrimination regulations, the utility may give emphasis to the quality of prospective increases in use of service instead of to quantity alone, so that cost of service in the future can be further reduced."

—H. J. O'LEARY,
Chief, rates and research department, Wisconsin Public Service Commission.

On Rate Refunds

"THERE is . . . the problem of the formula to be applied in determining the amount of the refund to each consumer. As a practical matter, it is impossible to devise a workable formula that will do complete equity between all consumers. In order to work out the exact amount due each consumer down to the last penny, it would be necessary to make almost endless calculations based upon the varying rates paid by the different consumers during the impoundment period, as well as the volume of gas consumed by each one at each rate. Practical considerations have recommended one of two formulas. One is called the 'Dollar Basis'; the other the 'Volume Use Basis.' The Dollar Basis makes the distribution to each consumer in proportion to the dollars paid by each consumer during the impoundment period. The Volume Use formula makes the distribution upon the basis of the volume of gas consumed by each customer during the impoundment period. Experience has shown that the Volume Use Basis is the more workable and less expensive. The calculations can be made from the company's record of meter readings. In cases where the customer has been on the line during the entire impoundment period at the same address and on the same meter, only the meter readings at the beginning and the end of the impoundment period need be used. This is the formula that has actually been used in most cases throughout the nation."

—JOHN P. RANDOLPH,
Member, Missouri Public Service Commission.

"In Missouri we have taken the view that the distribution of such [impounded] funds should be to the domestic and smaller commercial users. We have always insisted that industrial users have no right to share in such refunds because they were enjoying either a special contract rate or a scheduled rate designed with a view to the price of competitive fuels, and rates of this kind would not be reduced by our commission merely because there had been a reduction in the wholesale rate.

"We were sustained in these views by the Tenth Circuit [U. S.] Court of Appeals in the distribution that was made of the impounded funds in the Cities Service Gas Company Case. We were not sustained in these views by the Eighth Circuit Court of Appeals in the Panhandle Eastern Pipe Line Company Case. In the latter case a plan of distribution was adopted by the court that permitted industrial users to share. We didn't like that plan at the time it was adopted and vigorously protested against it, and we still don't like it. We think the Supreme Court's decision in the Interstate Case has vindicated our views in this respect. Certainly there can be no equity in any claim to impounded moneys by a large industrial user when such a user would not have had his rate reduced by reason of a reduction in the wholesale rate."

—John P. Randolph,
Member, Missouri Public Service Commission.

On Safety Regulation

"The safety directors of almost all utilities agree that one field in which much can be done towards safer operation is in job training. Job study programs are becoming more and more important as the companies with the best accident records are showing us. Some of the telephone companies have made great strides in the matter of utility safety and have attributed this continued progress to detailed job study programs coupled with very comprehensive job training programs. A very extensive job study program is necessary in order to determine *the one* best way of doing a job, and then it's up to the training program to train the employee to do it that way.

"As you can see, such an undertaking requires a great deal of planning, initial expense, and doing. This is another way of saying it's up to every employee of the company from the apprentice to *and including* the president. Even with the best safety director, such a plan cannot advance without the wholehearted support of top management."

—Report *of Committee on Service and Facilities and Safety of Operation of Public Utilities, George H. Flagg of Oregon, chairman.*

"Our safety obligations, as set out in the statutes of the various states, may be confined to specifying construction standards and perhaps making certain inspections. Our moral obligations, however, go beyond this. We should take it upon ourselves to be thoroughly familiar with the accident records and safety program of each utility under our jurisdiction, and do all we can within reason to improve these records."

—Report *of the Committee on Service and Facilities and Safety of Operation of Public Utilities, George H. Flagg of Oregon, chairman.*

On Telephone Rates

"The telephone industry presents the outstanding example of the principle of selective pricing in public utility rate making. . . . Probably in no other utility industry do rates deviate so far from costs. Such deviations from cost have been justified on the so-called value of service principle. Value of service is not usually subject to precise measurement and consequently rates established in accordance with that principle frequently represent what the rate maker thinks the service is worth or what he thinks the customer will pay."

—H. J. O'Leary,
Chief, rates and research department, Wisconsin Public Service Commission.

On Telephone Regulation

"We reported at last year's convention that in 1947 Western [Electric] reported sales of over $900,000,000. Those, together with other income, produced profits in excess of $35,000,000. These profits equaled 7.8 per cent of Western's reported net investment and produced a return of 11.9 per cent on the American Company's investment in Western. Both sales and profits in 1947 were the largest in history of the company, but

they were even greater in 1948. To illustrate, sales totaled slightly less than $1,120,000,000 and reported income available for interest and dividends amounted to $53,343,000. This net income is equal to a return of 11.6 per cent on reported average net investment during the year, and the income available for dividends was $50,848,000 which is equal to 16.6 per cent on Western's equity capital investment, 99.8 per cent of which is owned by the American Company. The first quarter of 1949 shows a downward trend in business."

—REPORT *of the Special Committee Coöperating with the Federal Communications Commission in Studies of Telephone Regulatory Problems, Matt L. McWhorter of Georgia, chairman.*

"IN your [telephone regulation] committee's report of last year, attention was directed to the fact that Western [Electric] had been requested to review its depreciation rates on a total life straight-line basis and, in addition, on the remaining life method of accrual. This review has been completed for buildings, machinery, and service equipment and the company's conclusion that the total life straight-line rates currently applied to these classes of plant should be continued. However, if the remaining life method were to be adopted for these three classes of plant investment, depreciation accruals during 1949 would be approximately $2,800,000 less than those which will be accrued through the use of the total life straight-line rates. It is interesting to note that the depreciation rates used for machinery are related to production, with charges at somewhat higher rates in periods of high productivity than apply in years of lower production."

—REPORT *of the Special Committee Coöperating with the Federal Communications Commission in Studies of Telephone Regulatory Problems, Matt L. McWhorter of Georgia, chairman.*

On Postwar Service

"ALL of us can agree . . . that the postwar cycle in which the public utility industry finds itself has been characterized by three dominant factors: an unprecedented demand for increased public utility service, the tremendous impact of rising operating costs, and the ever-mounting tax burden. No one of these factors is within the control of either the industry or the regulatory commissions. Each of them must be recognized and effectively dealt with if the needs of the nation are adequately to be met and the public utility industry is to be maintained on a sound and stable basis.

"However, with an apparent leveling off of business which appears evident on the horizon and with declining volume of carrier traffic, there is need for us to STOP, LOOK, and LISTEN."

—JUSTUS F. CRAEMER,
Retiring president, National Association of Railroad and Utilities Commissioners.

On Price Fixing and Rates

"ONE of the principal functions of selective pricing is the designing of utility rates in such manner as to bring about an improved cost experience. Traditionally, utility rates have been based largely upon costs experienced in the past.

"The propriety of the rate for any particular kind or class of service was determined by its relative responsibility for costs which had been experienced in supplying all of the service offered by the utility. It is apparent that a shift in the cost burden of one kind or class of service has a bearing upon the reasonableness of rates for that particular service as well as the rates for other classes of service furnished by the utility."

—H. J. O'LEARY,
Chief, rates and research department, Wisconsin Public Service Commission.

On Telephone Service

"THE Michigan Public Service Commission, *Re* Michigan Bell Teleph. Co., September 28, 1948, allowed as a justified operating expense for services and licenses about $293,000. Over $1,400,000 was claimed by the utility. The amounts assigned to particular services received are not set forth in the opinion, but the commission stated that it could not agree with the contention made that the total cost of such services would have been the same were the American system companies operated as one. It then referred to activities

of the American Company relating to the maintenance of its own investment position in its subsidiaries, and, as an example, cited the inclusion in claimed services a portion of the income taxes if paid on dividends received from the Michigan Company's operations. It will be of interest here to note the remedy then suggested by the commission to alleviate for the future the difficulty it encountered in making proper assignment of such intercompany costs. The commission said:

"'If the American Telephone and Telegraph Company would establish a separate, nonprofit organization, and permit this organization to perform the services required by the associated companies, this would eliminate the commingling of service functions with holding company functions. The service division, or company, could assign its costs to the companies served on the basis of direct charges to specific companies for specific work. We appreciate that, after such division is established, it will not be possible to directly assign all costs. Costs not directly assignable should be allocated upon a reasonable basis, depending upon the nature of the activities. In rate proceedings before it, and until such time as a separate service organization is established, the Michigan Bell Telephone Company will be considered to have paid for services rendered to it by the American Telephone and Telegraph Company upon the basis of cost as determined in the manner demonstrated by the commission's staff witness in these proceedings, as adjusted and adopted by this commission.'"

—REPORT *of the Committee on Progress in the Regulation of Public Utilities, Ira H. Rowell, of California, chairman.*

"THE advocacy of a strong, stable rate base, as clearly indicated in the . . . [Southwestern Bell Telephone Case], advances an argument that seems well-nigh impossible to refute. This position is emphasized when consideration is given to the thousands of dollars—perhaps millions—and the practically unlimited periods of time, that are expended year after year in the preparation and presentation of reproduction cost new and cost price trend indices evidence, which is submitted to commissions throughout the country in pending rate proceedings."

—JAMES J. DANAHER,
Member, Illinois Commerce Commission.

"A DISCUSSION of regulation must involve rates. It is not my purpose to discuss the technical process of rate making, or laws and court decisions which are applicable. Most commissions, in my spot check, require the same kind of proof for small as large companies, but not in the same degree or detail. Allowances must be made because of the inability of small companies to prepare elaborate exhibits or furnish accurate plant investment figures. We must as regulatory bodies, it seems to me, tailor our concepts and procedures to fit the plight of many small companies and adjust our rate making for them to a rational, hardheaded business basis. Rates of small companies have for a long period of years been quite generally lower than larger companies. This has resulted in many cases in capital consumption, deferred maintenance, and no accumulated surplus. The exact situation may not be clearly reflected in company reports or in facts and figures presented in a rate case."

—WALTER F. ROBERTS,
Chairman, Nebraska State Railway Commission.

"SINCE VJ-Day, in three and one-half years, Bell system has added over 10,000,000 telephones. It took Bell more than forty-five years to obtain its first 10,000,000 phones. Today more than 32,000,000 are served by Bell.

"The independents have added a million phones since the close of the war. Their total today approaches 7,000,000 phones.

"Bell's new capital additions for plant expansion in the postwar years 1946, 1947, and 1948 totaled $3,335,000,000, a growth in plant investment of 58.5 per cent.

"Its debt structure has increased from 32 per cent of total invested capital at the close of the war to 53 per cent as of May 1, 1949.

"Annual payroll has increased from $728,000,000 in 1941 to $2,018,000,000 in 1948, or 177 per cent, while operating revenue increased 102 per cent. Revenue was $1,229,000,000 in 1941 as compared with $2,625,000,000 in 1948.

"Held orders in many areas of the nation are still a problem—over a million Bell orders still remain to be serviced."

—JUSTUS F. CRAEMER,
Retiring president, National Association of Railroad and Utilities Commissioners.

"ON May 31, 1949, the executive committee of this association adopted a resolution stating it to be the position of the association that the FCC should not require telephone companies to allow the attachment of Hush-A-Phone devices unless: '(1) Such devices serve a useful and necessary purpose and operate satisfactorily; (2) use of such devices will not endanger the quality of telephone service; and (3) the requirement is in such form and so conditioned as to avoid any direct or indirect encroachment upon the jurisdiction of state regulatory commissions respecting exchange and intrastate toll service.'"

—FREDERICK G. HAMLEY,
General solicitor, National Association of Railroad and Utilities Commissioners.

On Progress in Regulation

"If we are to be fair to both consumer and utility, save large sums of money, the expenditure of vast amounts of time in the preparation and presentation of data representing reproduction cost theory or methods sympathetic to the rule in Smyth *v.* Ames—time not only of expert witnesses but of officials of the utilities as well—our responsibility seems clear that we should advocate the adoption of a definite legislative program that would make prudent investment an accepted procedure in all rate case proceedings."

—JAMES J. DANAHER,
Member, Illinois Commerce Commission.

"Under more normal conditions selective pricing, within the limits permissible under antidiscrimination laws, may be utilized for the purpose of reshaping and reducing the cost curve. This may be accomplished through rate structures by encouraging those loads which will improve load factor or fill in valleys in the load curve and at the same time not encourage loads of the opposite type. The adaptation of rate schedules to bring about such results is not easy of accomplishment and may require the exercise of considerable skill and ingenuity. The important point is the acceptance of a forward-looking point of view which casts aside exclusive reliance on experienced costs, plus the willingness to use rates as a medium for guiding and shaping future costs rather than expressing past costs."

—H. J. O'LEARY,
Chief, rates and research department, Wisconsin Public Service Commission.

"In the Federal field, Senator McCarran of Nevada has introduced a bill (S 527, 81st Congress, 1st Session) to provide general rules of practice and procedure before Federal agencies. Section 3 of the bill sets up a commission to formulate and transmit to the Attorney General of the United States for report to the Congress general rules of practice and procedure for Federal agencies, including forms and such rules as it may deem appropriate in agencies respecting judicial proceedings for the enforcement or review of agency action."

—REPORT *of the Committee on Regulatory Procedure, Everett C. McKeage of California, chairman.*

On Utility Taxes

"After the question of which consumers are to receive the impounded moneys has been determined, other troublesome problems arise. . . .

"First, there is the question of Federal income taxes. If the impounded money be treated as the money of the distribution companies, it is, of course, subject to Federal income taxes. In both the Cities Service Gas Company Case and the Panhandle Eastern Pipe Line Company Case the Missouri distribution companies, pursuant to their agreements with our commission, filed disclaimers in Federal court so that the court could make distribution of the funds direct to the ultimate consumers, but in each instance the distribution company found it necessary to apply to and obtain from the United States Treasury Department a closing agreement releasing the company of any claim to income tax liability as a result of the disclaimer of the impounded money. The Treasury Department has been very coöperative and in each instance the necessary closing agreement was obtained."

—JOHN P. RANDOLPH,
Member, Missouri Public Service Commission.

"Taxes for the natural gas operating utilities have increased since the immediate prewar period about 8½ per cent expressed in terms of gross operating revenues. A much larger increase in the absolute amount of taxes has resulted in view of the high percentage increase in operating revenues already stated. Expressed in per cent of operating revenues, taxes on the manufactured gas industry have shown a decrease.

"The impact of the increased investment and costs of operation of the gas industry on rates has been deferred for reasons already outlined. It is inevitable, however, that some portion of these increased over-all costs must be passed on to customers in the future.

"Both corporate taxes and excise taxes are a problem we can do something about if you and I will let our voices be heard in Washington. It is important that members of Congress are advised as to the effect of these ever-spiraling and expanding taxes on our economy. The long-haul traffic of both transportation and communications utilities is hardest hit by them.

"There is a crying need that something be done in Washington about this problem. Over 40 bills already have been introduced in the Congress of the United States either to abolish or amend the transportation and communications taxes. The authors of these bills come from practically every section of the United States. This indicates the growing alarm even in Washington over these taxes."

—JUSTUS F. CRAEMER,
Retiring president, National Association of Railroad and Utilities Commissioners.

WHAT THE STATE COMMISSIONERS ARE THINKING ABOUT

On Prudent Investment

"GENERALLY, the stable rate base which has been approved has been one determined by reference to the original cost of the property used and useful in the public service. In the absence of evidence that such original cost was excessive at the time the property in question was acquired, such a rate base is exactly the same as would result from application of the notions of prudent investment.

"Since 1946, up to and including 1948, the following commissions have adopted prudent investment or original cost in some form in the determination of a rate base: Alabama, Arizona, Idaho, Louisiana, Nevada, New Mexico, New York, Tennessee, and Virginia.

"We could not very well discuss the prudent investment theory without giving serious consideration to the Hope Natural Gas Company Case, which, up to the present time, appears to be the final word on this subject.

"Many more cases could be cited and discussed. A number of additional articles of recognized authorities could be referred to, all advocating the use of prudent investment as a method of determining a utility rate base. We can see no real good to be accomplished in following such a procedure. The law appears to be plain and undisputed. The Supreme Court of the United States in the Hope Natural Gas Case clearly indicated the way was open in which prudent investment might become an accomplished fact."

—JAMES J. DANAHER,
Member, Illinois Commerce Commission.

TYPICAL GAS, ELECTRIC, AND TELEPHONE BILLS
TWENTY-FIVE LARGEST CITIES IN THE UNITED STATES
June 30, 1949*

City	Population 1940	Gas 30.6 Therms	Electricity 75 Kw. Hrs.	Telephone 2-Party Flat Rate Handset	Total	Rank
San Francisco	634,536	$1.59	$2.30	$3.25	$ 7.14	1
Houston	384,514	2.18	2.33	2.75	7.26	2
Kansas City, Mo.	399,178	1.58	2.63g	3.25	7.46	3
Los Angeles	1,504,277	2.20	2.22	3.25	7.67	4
Cincinnati	455,610	2.29	1.93	3.50	7.72	5
Cleveland	878,336	1.90	2.05	4.05	8.00	6
Minneapolis	492,370	2.74	2.61	2.75	8.10	7
Louisville	319,077	2.41	2.25	3.75	8.41	8
New Orleans	494,537	2.20	2.99	3.50	8.69	9
Pittsburgh	671,659	1.65	3.05	4.00	8.70	10
Denver	322,412	2.53	2.60	3.65	8.78	11
Buffalo	575,901	2.45b	2.28	4.32	9.05	12
Seattle	368,302	f	5.35f	4.00	9.35	13
Washington, D. C.	663,091	3.98	2.27	4.00	10.25	14
St. Louis	816,048	4.29	2.26	3.75	10.30	15
Detroit	1,632,452	3.05	3.07g	4.75	10.87	16
Chicago	3,396,808	3.47	2.64	4.93a	11.04	17
Indianapolis	386,972	4.56	2.93	3.80	11.29	18
Milwaukee	587,472	5.27	2.41	4.50	12.18	19
Baltimore	859,100	5.34	2.64b	5.00	12.98	20
Philadelphia	1,931,334	5.68	2.96	4.50	13.14	21
Newark	429,760	6.47	3.08	4.85	14.40	22
Rochester	324,975	6.56	3.24	4.75	14.55	23
New York c	7,454,995	6.55d	3.93e	5.29a	15.77	24
Boston	770,816	8.22	3.95b	5.08a	17.25	25

* Based on latest available data as of July 8, 1949.
a. Message rate service with 85 messages; flat rate service not offered.
b. Base rate; subject to adjustment for fuel price and fuel consumption.
c. Manhattan and Bronx.
d. Winter rate.
e. Adjusted for effect of latest fuel price available.
f. All-electric service (450 kilowatt hours) assumed in view of relatively high present gas rate and predominant use of electricity.
g. Includes lamp replacement service.
(This table accompanied the address of the retiring president, Justus F. Craemer.)

On Taxes

"THE association adopted a resolution at the 1948 convention favoring the repeal of the Federal excise tax on the transportation of property, and the repeal or reduction of Federal excise taxes on other transportation and communication services (1948 NARUC Proceedings, page 221).

"In addition to the several reasons set forth in the association resolution of 1948 why these taxes should be repealed or reduced, there has been a recent development which adds an important new reason why Congress should take this action. This new development was the repeal, on March 23, 1949, of the 15 per cent Canadian excise tax on the transportation of persons in Canada. The repeal of the Canadian excise tax has produced a situation which permits intolerable preferences and discrimination between passengers, and places an unfair burden upon railroads operating in this country.

"It is our recommendation that the resolution adopted in 1948 be redrafted to include this additional reason why these Federal excise taxes should be repealed or reduced, and to make specific reference to the pending bills on the subject referred to above, and that, as redrafted, such resolution be adopted at the 1949 meeting of the association. . . ."

—REPORT *of the Committee on Legislation, H. Lester Hooker of Virginia, chairman.*

On Valuation

"FROM the . . . presentation [of rate base procedures] it is evident that regulatory processes have now been so systematized that the work of the valuation committee is substantially completed and that proper rates will automatically spring from the application of proper percentages to some accurate book costs which have themselves been corrected for proper depreciation. Regulatory procedures are much more definite now than they once were, and the properly limited definitions and abstract procedures noted . . . have unquestioned merit. We have progressed measurably toward the goal of equitable utility regulation and the end may be in sight although it appears many obstacles still remain to be overcome.

"Probably the first point requiring clarification is the accuracy of the existing book costs. For those utilities which have completed the work on continuing property records there is probably a sufficiently close agreement between the present book costs and the property now in plant to justify the use of such costs in a rate case. The greater portion of utility property is held by large companies with adequate records. The remainder of the utilities have, with few exceptions made no effort to install continuing property record systems. These smaller utilities outnumber the larger ones. Thus the uncritical and indiscriminating use in rate cases of existing records of all utilities, which in some cases contain the accumulated errors of many years, would lead to improper results.

"In conclusion it may be noted that our knowledge and our tools are improving and that we may look forward to the time when all essential factors for equitable rate adjustments will be readily at hand. In order that the ground already gained may be held and new ramparts carried, there should be constant study and further effort to simplify methods and overcome the obstacles that confront regulatory bodies in rate fixing."

—REPORT *of the Committee on Valuation, Samuel Bryan of Wisconsin, chairman.*

On Small Company Regulation

"PERHAPS we as regulatory bodies have been overcautious about invading the field of management in connection with small companies. Realistic regulation should recognize the problems of management and realize its limitations. It should offer, in the interest of the public, whatever service it may be able to furnish. Regulatory bodies cannot supply all the deficiencies of management but they can be of service to the limit of the staff . . ."

—WALTER F. ROBERTS,
Chairman, Nebraska State Railway Commission.

"WE must . . . be more practical than scientific if we are to give the most valuable service to the over-all improvement of telephone service. If our decisions force small companies to use borrowed capital to catch up on deferred maintenance, we may help to create a serious complication in the future, which may result in a continuation of poor service and the ultimate destruction of the small independent telephone system. Small companies have difficulty in obtaining loans at reasonable rates, and may face trouble in repayment, particularly in depression or difficult times that may lie ahead."

—WALTER F. ROBERTS,
Chairman, Nebraska State Railway Commission.

The March of Events

In General

Joint AGA-EEI Study

In a recent joint announcement, the American Gas Association and the Edison Electric Institute reported the preparation of a detailed study of the problems incidental to the financing of the tremendous postwar capital expansion in the gas and electric utility industries. The study will be ready for publication about the middle of September.

Designed primarily to assist individual member companies of the two associations in financing their respective capital programs, the study will also be made available to interested outside sources, including regulatory commissions and various interested groups in the financial community.

The study is the work of a committee of utility industry executives, under the joint chairmanship of E. W. Morehouse, vice president of General Public Utilities Corporation, and H. H. Scaff, vice president of Ebasco Services Incorporated, assisted by leading authorities in the insurance, investment, and banking fields.

It discusses some of the most important problems confronting utilities in raising additional capital, and offers tentative suggestions which may assist individual management in their solution.

Member Co-op Sues Ark-La

The Southwest Arkansas Electric Coöperative of Texarkana, Texas, was recently reported to have obtained a Federal court order in Shreveport, Louisiana, against its parent coöperative, the Ark-La Corporation.

The court action charged that directors of the Ark-La coöperative were conspiring to dissipate the assets and funds of its 10 member coöperatives.

According to press reports, Federal Judge Ben C. Dawkins signed an order tying up the books, assets, credits, properties, and some $95,000 in cash held by the Ark-La Corporation, pending a hearing in a Shreveport Federal court.

The complaint asked the court to liquidate the Ark-La Corporation and prorate the remaining assets among the 10 member coöperatives—five in Arkansas and five in Louisiana.

Prominent Speakers to Address AGA

Outstanding speakers representing several phases of business and industry will bring new ideas and practices to delegates attending the thirty-first annual convention of the American Gas Association in Chicago, October 17th to 20th. The general theme of the convention will be the popular "Gas Has Got It" slogan that has identified the coördinated promotional efforts of the gas industry so successfully. Promotional activities of the industry now are concentrated on the "Old Stove Roundup," and the convention, under the title of the "'49 Roundup," will carry on the western flavor of this nation-wide program.

Based on more than 3,000 advance registrations that were made by mid-August, a total registration of 6,000 is expected.

A strong program has been arranged by the general convention committee under the chairmanship of George F. Mitchell, president, Peoples Gas Light & Coke Company, Chicago, and the sup-

porting departmental and sectional committees. Broad-gauged problems of the gas industry's main divisions will occupy the opening day of the convention. Leading off on Monday morning will be a meeting of the natural gas department under the chairmanship of D. A. Hulcy, president, Lone Star Gas Company, Dallas, and vice president of the association.

The manufactured gas department takes over Monday afternoon with a program of compelling interest. Under the chairmanship of H. H. Cuthrell, vice president, Brooklyn Union Gas Company, and vice president, AGA, the association's gas production research program, which is opening new vistas for manufactured gas, will be reviewed. Special attention is expected to be paid to natural gas mixing and changeover problems, which now confront many companies on the eastern seaboard and elsewhere. In addition, such subjects as long-term load forecasting, peak load developments, and the general fuel situation, are being considered for presentation.

Three general sessions have been arranged for Tuesday, Wednesday, and Thursday mornings. These sessions provide a forum for top-ranking authorities to expound their views on the most urgent problems affecting the industry's welfare. Economics, promotion, industry relations, markets, man power, pensions, and personnel are among the topics on the agenda.

Leading off the first general session will be the traditional address of AGA President Robert W. Hendee, who is also president of Colorado Interstate Gas Company, Colorado Springs, Colorado. Keyed to the theme of "The '49 Roundup," Mr. Hendee's remarks will spotlight the marked progress made by the gas industry in one of the most successful years in association history.

Under the intriguing title, "Operation Enterprise," Frank J. Nugent, president, Gas Appliance Manufacturers Association, will analyze the appliance manufacturers' future plans from the viewpoint of further integration with the national programs of the utilities.

The 1949 pension attitude, a magnet of attention for both labor and management, has a prominent place on the program. Henry S. Beers, vice president, Aetna Life Insurance Company, Hartford, will orient the gas industry on a sound approach toward employee retirement, financing pension costs, and the philosophy of different methods of charging the costs. He will also discuss proposed changes in old-age benefits under the Social Security Act.

"Safety Is Your Business," according to Dr. Ned H. Dearborn, president, National Safety Council, Chicago, who will deliver an address on this vital and ever-present problem. Dr. Dearborn will indicate how the average person can enlist in the war on accidents and will point out practical ways of preventing them.

A mandate for more sales will be presented by Hugh H. Cuthrell, chairman, general promotional planning committee, who will be making his second convention appearance following his chairmanship of the manufactured gas department meeting. In his talk, entitled "Scanning the Planning for Sales in '50," Mr. Cuthrell will discuss the far-reaching promotion and advertising plans projected and supported by the PAR Program.

One of the gas industry's most profitable and stable pay loads will receive attention when Frank H. Trembly, Jr., sales manager, Gas Works Company, speaks on "The Commercial Cooking Load Belongs to the Gas Industry." Mr. Trembly will analyze the current competitive situation, report on the activities of subcommittee on comparative tests of commercial cooking equipment, and recommend a course of action for the industry.

Striking at the heart of a fundamental industrial problem, Dr. Henry T. Heald, president, Illinois Institute of Technology, Chicago, will describe effective methods of training technical man power with particular reference to the gas industry.

The general sessions program will be rounded out with the election of officers, special events, and the presentation of AGA awards.

Michigan

Correction in Consumers Gas Rate Increase Report

On the basis of more recent and reliable information, the report published in the August 18th issue of PUBLIC UTILITIES FORTNIGHTLY (page 250) appears to have considerably exaggerated the effect of the $1,161,000 gas rate increase authorized on July 1st by the Michigan Public Service Commission for the Consumers Power Company. It was therein estimated that the July 1st increase would boost consumers' bills from 15 to 20 per cent, and greatly increase the combined total average increase prior to April 7th, when another rate adjustment was authorized.

It is now authoritatively reported that the effect of the July 1st increase on average customer bills was only 6 per cent, and the combined total increase of both the April and July orders was estimated at 17 per cent (instead of 35 to 50 per cent, as earlier reported).

The Michigan Public Service Commission subsequently, on August 12th, denied the petitions of the cities of Saginaw, Lansing, and Bay City for rehearing—permitting the rate increase to go into effect.

The company originally petitioned on April 2, 1948, for an increase, on which proof was later submitted to justify an over-all increase of $4,800,000, calculated to yield a return of 5.22 per cent on present fair value. Subsequent to the commission order, a year later, granting rate relief in the amount of $1,800,000, the company modified its request for additional relief to $1,400,000.

Utility Law Revision Urged

CHANGES in state public service commission operations to increase efficiency and eliminate red tape were proposed by Chairman John H. McCarthy, speaking at the Michigan Motor Bus Association's convention at Harbor Springs last month.

One proposal was substitution of another system for the mileage tax levied on busses and trucks. The state legislature considered imposing a flat fee, at the commission's suggestion, but rejected the idea. McCarthy said a legislative committee was working on recodification and revision of public utility laws.

Montana

Damage Suit Filed

MONDAKOTA GAS COMPANY recently filed $30,612,480 Federal court damage suit against the Montana Dakota Utilities Company, alleging the defendant tried to monopolize the natural gas business in eastern Montana's Bowdoin and Baker fields.

The complaint said other defendants will be named later.

Mondakota says it lost $10,204,160 when Montana Dakota—a common carrier with gas lines through Montana and the Dakotas—refused to carry Mondakota gas over Montana Dakota lines to Mondakota customers.

New Mexico

Sale of Utility Considered

ARTHUR PRAGER, president of Public Service Company of New Mexico, recently announced his company was considering the sale of its gas distribution system in Albuquerque, New Mexico, to

Southern Union Gas Company of Dallas, Texas.

The New Mexico utility now handles retail distribution in Albuquerque of natural gas that it buys wholesale from Southern Union.

The utility's gas properties were carried at a value of $3,333,989 on its books as of December 31, 1948. Any sale of the properties would have to be approved by the New Mexico Public Service Commission.

The New Mexico company at present furnishes electric, gas, water, and ice service in New Mexico. The electric operations last year accounted for $4,000,000, or two-thirds of its operating revenues. Gas sales in 1948 amounted to $1,861,000 while water and ice sales amounted to $359,000.

Appeals Rate Order

ATTORNEY General Joe L. Martinez advised the state corporation commission last month he will appeal the commission's order confirming increased telephone rates in New Mexico. Martinez said he believed that conclusions contained in the commission's August 2nd order approving the higher rates "are contrary to the facts and to the law applicable in cases of this kind." At the same time Martinez withdrew as counsel for the corporation commission.

"My primary and paramount obligation is to the people of the state," he asserted.

He said he would be joined in his appeal of the order to the supreme court by several attorneys who appeared to represent various communities at the hearing held last month.

He told commission Chairman Dan Sedillo he was sure "that the telephone company will supply you with the best possible counsel in order to sustain your position."

Sedillo and Commissioner Eugene Allison immediately said they would fight any move to change the order in the supreme court.

New York

New Budget Payment Plan

CONSOLIDATED EDISON COMPANY of New York, Inc., is offering to its gas house-heating customers a new simplified budget payment plan.

This plan, described in a brochure recently mailed to gas house-heating customers, is scheduled to go into effect this month. It offers customers the opportunity to spread gas house-heating costs evenly over the 10-month period, September through June.

It is pointed out in the brochure that experience has shown that about 82 per cent of house-heating fuel consumed during the heating season is used between November and March. This means larger gas bills during months when family expenses are usually heaviest.

Under the new plan customers can pay 10 per cent of their estimated 10-month heating season gas costs each month. Thus monthly payments will remain constant and larger bills during peak periods are avoided.

All accounts will be squared off at the end of the heating season in July. Budget payments for existing installations will be based on analyses of their gas consumption over past heating seasons. In cases involving new installations, the sales department will make a survey of the premises and monthly payments will be based on estimated consumption.

Steps will be taken to avoid excessive differences in accounts at the end of the season. If monthly payments are found to be too high, a credit will be applied to a customer's bill before July and standard billing procedure will apply until the following September when a revised payment plan will be put into effect.

On the other hand, if the budget estimate is too low, a revised plan will be prepared so that the customer will not be faced with a burdensome balance in July.

Pennsylvania

New Rate Increase Filed

THE Pennsylvania Power & Light Company filed new tariffs with the state public utility commission recently, calling for increased electric rates for nearly all its customers, effective October 24, 1949.

The new rates, if approved by the commission, will boost the company's annual revenue by $2,126,100, or 5.9 per cent.

The new rate schedule replaced two other proposals withdrawn by the company last July. The latest filing is designed to meet objections of the Pennsylvania Grange and reduce the amount of increase to be borne by farmers and residential users. Rates of large industrial users would remain unchanged.

South Dakota

Seek Power District Law

EASTERN South Dakota REA coöperatives last month called upon Governor George T. Mickelson to call a special session of the state legislature "immediately" to enact a consumers power district law.

The request was made in a formal resolution unanimously adopted at a meeting of 18 REA coöperatives, with about 200 members, managers, and directors present, representing about 35,000 farm members. The meeting was called in Huron by the co-ops to consider methods of obtaining more power in the period before Missouri river hydroelectric power will be available from Fort Randall in 1953 and of having firm power thereafter.

The coöperatives also passed a resolution which would have the effect of requesting the Federal government to loan South Dakota coöperatives grants to construct steam generating plants and transmission lines by 1951, to be used before river power and worked into the Missouri basin hydroelectric transmission grid after river power is available.

Tennessee

Co-op Assessments Slashed

THE state railroad and public utilities commission recently slashed the 1949-50 property assessments of Tennessee's 24 electric coöperatives from $21,848,200 to $6,677,650. Announcement of the drastic cut from the tentative 320 per cent increase over last year's assessments was made by Commission Chairman John C. Hammer.

The new figure is still $1,620,650 more than the valuation placed on the co-ops' property for taxation purposes two years ago.

Vermont

Commission Order Appealed

THE Central Public Service Corporation last month appealed to the Vermont Supreme Court from the public service commission's order allowing only one-fourth of the increased electric revenues requested by the utility in its application filed April 11th.

The commission on August 9th handed down an order allowing electric revenue increases of $85,000 against the $337,000

asked by the power company from residential customers.

The finding was based on hearing held in Rutland during several sessions in June and July.

On the same date the commission permitted the company to boost gas rates in Rutland enough to bring in an estimated $43,000 more annually.

The new electric rates, to go into effect when the utility files the new schedule with the commission, have not been established, according to a company spokesman.

The gas rates went into effect immediately.

Albert A. Cree, president of the power company, said the appeal consists of over fifty exceptions to findings handed down by the public service commission.

Virginia

Commercial Gas Rate Cut Proposed

MINIMUM monthly rates for commercial and industrial gas users in Richmond will be cut in half by an ordinance introduced into city council last month.

The new ordinance reduces the monthly minimum gas rate for commercial and industrial gas customers inside the city from $4 for the first 3,000 cubic feet to $2 for the first 400 cubic feet.

The monthly minimum for limited county commercial and industrial gas users is reduced from $4.20 for the first 3,000 cubic feet to $2.10 for the first 400 cubic feet.

Washington

Electric Heat Units Pondered

THE Washington Public Service Commission took under advisement last month the question of regulating the installation of electrical space-heating units.

At a 3-day hearing in Seattle, the commission heard arguments by representatives of Pacific Northwest power companies and manufacturers of the electrical heating equipment.

Power company spokesmen declared that unrestricted installation of new electrical space-heating devices would contribute materially to a power shortage during the winter months when power consumption reaches a peak.

They pointed out that this area faces a power shortage for several years until new dams and generating plants get into production.

Representatives of equipment manufacturers said special equipment could be attached to the space-heating devices to reduce the power load and that by proper insulation of houses the power demand also could be cut.

Wisconsin

Gas Rate Hike Granted

THE state public service commission recently granted a $126,226 boost in yearly revenues to the Wisconsin Southern Gas Company.

The company, which operates in southeastern Wisconsin, was allowed to raise its revenues from $389,422 to $515,648 a year. It had originally asked for a boost to $528,678 in order to take care of increased expenses.

The commission said the new rates would hit hardest at heat and commercial users. Residential and industrial rates were lowered slightly.

Progress of Regulation

Financial History Repels Confiscation Claim But Higher Telephone Rates Allowed

THE Florida commission allowed the Southern Bell Telephone & Telegraph Company to increase intrastate rates to produce a return of 6 per cent on net average investment in property used and useful. Reproduction cost was said to be too speculative and conjectural to have probative value.

The financial history of the company, said the commission, repelled the suggestion that it had been or was suffering from confiscatory rates. Actual experience over the years was said to be more convincing than tabulations of estimates.

Without specifically approving the fixed percentage-of-revenue basis for the calculation of the license fee paid to the American Telephone and Telegraph Company, the commission made an allowance for services supplied by the parent company.

The social and economic advantages of pensions for superannuated employees were recognized, but the commission did not agree that "arresting payments" should be approved as current operating expenses. The company's failure prior to 1927 to establish and maintain pension trust funds by current accruals had given rise to an unfunded actuarial liability. Nothing was done to arrest its growth until in recent years the company began to pay into its pension fund and to charge to operating expenses a percentage of its unfunded actuarial liability. This amount was disallowed.

Plant under construction, the commission ruled, should be excluded from the rate base where (a) no allowance has been made in operating income accounts for additional revenues to be received from such plant, (b) the utility makes charges for interest during construction, and (c) there is no evidence from which the commission can reasonably conclude that plant under construction will be in service within a reasonably short period of time. Property held for future use was excluded where no plan was disclosed for its immediate use.

The amount represented by the account Telephone Plant Acquisition Adjustment was excluded as not representing property used and useful in the rendition of service. This account, it was explained, represented essentially the difference between the amount of money actually paid for plant acquired and its original cost.

A working capital allowance, in the opinion of the commission, will be proper and reasonable when arrived at by taking one-eighth of the annual operating expenses for the toll service less certain specified items. In view of advanced billing for exchange services, the commission did not feel that exchange operating expenses should be considered in arriving at the allowance for working capital.

The 6 per cent legal rate of interest in Florida was said to be one element which might be considered in fixing a fair rate of return. The company contended for a rate of 6.66 per cent based upon three factors: (1) the relative amounts of debt capital and equity capital, (2) the rate of interest (2.82 per cent) paid on debt capital, and (3) the rate of dividends (9 per cent) to which the company contended the parent com-

pany was entitled. The commission said:

> Obviously, a rate of return predicated upon the three factors set forth above will fluctuate widely according to the varying percentages of debit and equity capital, interest rates and dividend rates, and is, therefore, unreliable in that it attempts to establish its so-called earning requirements rate as the reasonable rate to which the utility is entitled. A reasonable rate is not a matter of formula, nor in establishing a reasonable rate, is controlling weight to be given to the interest rates or to the dividend on its equity capital.

The depressing effect of the current high cost of construction on the earning rate was considered. The current high cost of construction, the commission determined, had increased the average station investment from $211.87 to $236.52 since September 30, 1947, or an increase of 11.6345 per cent. The additional gross revenue requirements were obtained by dividing the needed additional net operating income by an expansion figure of .6037625 which represented the percentage of gross revenue inuring to Southern Bell Telephone & Telegraph Company under present tax laws and various other factors. *Re Southern Bell Teleph. & Teleg. Co. (Order No. BT 234, Docket No. 1637).*

Notice of Unlawful Use Not Sufficient Justification for Service Discontinuance

A MOTION for an order restraining a telephone company from discontinuing service to a subscriber and restraining the United States attorney from advising or assisting the service discontinuance was continued as to the company and denied as to the United States attorney.

The company, the commission pointed out, could not, on receiving a notice from law enforcement authorities, immediately discontinue service without any further proof or investigation. A company regulation permitting such action, the court continued, would be invalid since it would confer the equivalent of judicial power on a law enforcement official. This in effect would deny to members of the public valuable rights guaranteed them by the United States Constitution.

The burden of proof, the court pointed out, is on the utility in a service discontinuance case to show that the service is actually being used, or about to be used, for a criminal purpose. A mere notice from police or governmental authority does not satisfy that burden.

The proceeding was dismissed as to the attorney general since such a government official has a right to notify the company or take any other action he deems necessary in the proper performance of his duty as to a suspected unlawful use of a telephone, said the court. *Andrews v. Chesapeake & P. Teleph. Co. 83 F Supp 966.*

Service Denial Allowed after Police Notice

A FORMER subscriber's petition to compel a telephone company to restore service was dismissed by the Massachusetts Department of Public Utilities. The company, after receiving notice from police as to the unlawful use of the telephone, had acted under its filed tariff and terminated service.

The case illustrates the Massachusetts rule as to the extent to which reliance can be placed on police notice of a violation. The department inferred that neither the police notice nor its motives are to be inquired into. The company, it ruled, is not required to review the police decision but may safely discontinue service on the police "say-so." *Re A. C. Co. et al. (DPU 8672).*

Commission Regulation of Bus Fares Not Restricted by Old Franchise

THE appellate division of the New York supreme court, in a recent opinion, has explained the New York theory of commission regulation in cities where there have been franchise or other contract restrictions on rates. The court upheld a determination by a lower court, in City of Rochester *v.* Public Service Commission (1948) 77 PUR NS 405, that the commission could regulate bus rates although the bus company's predecessor (a street railway company) operated under a franchise limiting rates in the city.

The supreme court, in Quinby *v.* Public Service Commission, 223 NY 244, PUR1918D 30, had ruled that under a constitutional provision peculiar to street railways the commission could not nullify a rate provision contained in a municipality's consent granted under the consitutional provision. The legislature, it was held, had not granted such authority to the commission.

The doctrine of the Quinby Case, said the court, does not apply to other types of public utility operations. Rates of an omnibus corporation may be regulated regardless of contract. Although this company as a corporate entity might still be classed as a street railway, it had been operating nothing but omnibuses since 1941, and, therefore, said the court, it was to be treated as an omnibus corporation.

Quite apart from the right of the commission to disregard the maximum fare clause because of the change in operation from a street railway to an omnibus line, the court continued, it would appear that the parties themselves had abrogated and waived this provision. In 1920 the city waived the provision and permitted the corporation to apply to the commission for an increase in fares.

The court said it was extremely doubtful that the city retained the power to replace the block against commission jurisdiction despite any understanding it had with the corporation to the contrary, as embodied in a service-at-cost agreement. This agreement had been approved by the commission. It expired in 1930 and was thereafter extended from time to time until 1947.

Commission approval of these extensions was never secured. They were, therefore, ineffectual to deprive the commission of its regulatory jurisdiction over fares. The rates fixed after 1930 were statutory rather than contractual in nature and were no longer under the control of the parties. *City of Rochester et al. v. Public Service Commission et al. 89 NYS2d 545.*

Substitution of Busses Permitted without City Approval

A COMMISSION order approving the substitution of busses in place of trolleys was affirmed by the appellate division of the New Jersey Superior Court notwithstanding objections of competing motor carriers.

The competitors based their objection on the fact that no approval from the municipal authorities had been obtained. This, they said, amounted to a denial of equal protection of the law since they had to obtain such approval.

The street railway had substituted trolley busses for streetcars and then, at a later date, had obtained commission approval to substitute autobusses for the trolley busses. The court pointed out that where the commission has approved this last substitution no municipal authority was necessary.

To the competing bus lines' objection of unfairness since they had been required to obtain approval, the court answered that the street railway when organized originally had been required to obtain the approval of the city as well as the adjacent property owners. *South Orange Ave. Independent Bus Owners Asso. et al. v. Board of Public Utility Commissioners et al. 66 A2d 627.*

Comparative Service Standards Affect Value Of Distribution Lines Sold

THE New York commission authorized a small electric company to sell its distribution system to Central New York Power Corporation, a larger and stronger company, in view of substantial public advantage in the way of rate reductions and service improvement. The commission said it had for many years refused to permit the transfer of property at a figure materially in excess of asset value, computing the property on the basis of original cost less accrued depreciation.

In the present case, it was said, there was an element which must be considered and which made it difficult to determine with exactness what was a correct figure. Commissioner Eddy made the following statement:

> It is particularly true in telephone cases where the property of a company which has become substantially defunct is taken over by a strong company. The poles and wire may have some remaining use to the selling company but they have little use in furnishing the type of service which the acquiring company desires to give.
>
> To the same extent the situation here is comparable. It is clear that the property being purchased has a greater value to a company which would render poor, or at best mediocre, service than it would be to a company rendering a higher standard of service. In other words, much of the property involved here would unquestionably remain in service for a considerable period of time were it to continue in the ownership of Deer River. Under the ownership of Central New York it must be anticipated that it will be more speedily retired and we have the situation, therefore, where the lives of the property unquestionably would be longer in the hands of the seller than they would be in the hands of the purchaser, and it would, therefore, follow that the amount of accrued depreciation, to realistically reflect the actual expected lives of the property, would be different for one company than for another.

The fair purchase price, Commissioner Eddy continued, was probably something above the salvage value without considering the cost to remove. The transaction was reached at arm's-length bargaining. It was clearly in the public interest. Under the circumstances the commission could not say that the price was sufficiently excessive to require the commission to refuse to permit the transfer. *Re Deer River Power Co. (Case 14374).*

Commission's Power over Accounting Upheld

THE Pennsylvania Superior Court denied a water company's appeal from a commission order imposing a uniform system of accounts. The court ruled that it is now beyond question that Federal and state commissions have authority to prescribe uniform systems of accounting.

The utility's first objection was that any accounting order could apply only prospectively and could not relate to the original cost of property purchased years before.

The state court, overruling this contention, pointed out that there was no logical basis for such a limitation and that it would defeat the major purpose of the uniform system.

The utility further contended that the requirement that it separate on its books original cost from book or acquisition cost affected its property value and consequently was a taking of property without due process of law. The court pointed out that no violation of the company's constitutional rights was involved since an accounting order in no way affects the value of the utility's property or requires

the utility to write off part of its cost. It is not a rate proceeding, the court concluded, and involves no findings as to value. *Scranton-Spring Brook Water Service Co. v. Pennsylvania Pub. Utility Commission.*

Deposition Proper Evidence at Commission Hearing

A REHEARING was held before the Florida commission for the purpose of passing on the admissibility of a deposition offered in support of a motor carrier's application for a certificate to operate as a common carrier of houses and heavy materials.

The commission observed that the form of the sworn statement was proper and would have been admissible in a court and that consequently it was its duty to admit it into evidence.

An objection to its admissibility based on an alleged inadequacy of notice that it was to be taken was rejected when no showing was made as to why protestant's counsel wasn't present or that effort had been made to postpone the taking of the deposition. *Re Gilbert (Order No. 2313, Docket No. 2407-MC).*

Combination Utility May Not Offset Losses

NEW rates were authorized for low-volume gas customers of a gas and electric company by the Massachusetts Department of Public Utilities when it appeared that 57 per cent of the company's customers were in this category and that under the existing rate schedule this class of customers were contributing so little toward meeting the company's over-all cost of service that they were being carried at the expense of others.

The department scored the practice of permitting one side of a combination utility's operation, such as gas, to operate at a deficit where the other side, the electric department, was profitable enough to insure an over-all profit. *Re Lynn Gas & E. Co. (DPU 8341).*

Choice of Carrier within Commission Discretion

THE Pennsylvania Superior Court dismissed a motor carrier's appeal from a commission order awarding a certificate to a competitor when no proof was offered indicating that the commission's action was arbitrary, capricious, or unreasonable.

Evidence indicating that the carrier making the appeal was more experienced, better financed, and possessed of better equipment was not considered determinative. Whether or not these facts required that a certificate be awarded the carrier was described as "discretionary with the commission." *Grimm v. Public Service Commission.*

Rules for Street-lighting Extensions Liberalized

AN electric company was authorized by the Michigan commission to revise its rules covering extension of overhead street-lighting service to additional lights. This was a liberalization of its policy within established boundaries where the company applies its standard urban rates to residential electric service. The commission explained:

> Within such established boundaries only, applicant proposes to extend its distribution facilities and install the necessary equipment for additional

street lights, without charge for such facilities.

Outside of such boundaries, street-lighting facilities will be extended in conformity with the general principle that applicant will construct, free of charge, an extension inclusive of local equipment costing up to four times the estimated annual revenue to be received.

The company said that increases in the cost of construction had been such that it found it almost impossible to add any additional street lights to existing installation at costs less than four times the estimated annual revenue. It had been reluctant to enforce the revenue provision of its filed rule. *Re Menominee & Marinette Light & Traction Co. (D-3050-49.3).*

Other Important Rulings

THE Massachusetts department, in investigating a water company's proposed rate increase, stated that a return of about 6.3 per cent on the company's rate base was more than necessary to assure confidence in the company's financial integrity so as to maintain its credit and attract new capital, particularly in view of the company's expansion possibilities and its very good financial condition. *Re Auburn Water Co. (DPU 8647).*

The Indiana commission approved a revision of a rule requiring the testing of small alternating current meters, so as to make the period between tests ninety-six months instead of seventy-two months, holding that this would not adversely affect consumers and that the cost to the utilities for meter testing could be reduced. *Re Rules and Standards of Service for Electrical Utilities (No. 17689).*

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OHIO COURT OF COMMON PLEAS, FRANKLIN COUNTY

State of Ohio

v.

Western Union Telegraph Company

No. 174412
— Ohio Op —, 86 NE2d 479
May 4, 1949

ACTION *by attorney general on behalf of state Commission against telegraph company to enjoin proposed changes in service until Commission approval has been obtained; dismissed.*

Service, § 215 — Abandonment and modification — Approval.

1. Sections 504–2 and 504–3 of the General Code of Ohio require that a communication utility proposing the abandonment of a telegraph line or portion thereof refrain from doing so without first having obtained authority for such actions from the state Commission, but do not require that alterations, changes, or substitutions of the means to be used for rendering the service be approved by the Commission, p. 100.

Service, § 214 — What constitutes abandonment — Change in means of serving.

2. A telegraph company which proposes to close its offices in several communities and to move its machines and operators to near-by offices of the local telephone companies, but to render the same service as it rendered before, is not proposing to abandon its service but rather is proposing a change in the means by which the service is rendered, p. 101.

Service, § 215 — Abandonment — Necessary approval.

3. A telegraph company rendering both interstate and intrastate service, which services are inextricably intertwined one with the other, must secure the approval of the Federal Communications Commission before abandonment of any part of its service, but need not seek authorization from a state Commission, p. 103.

Interstate commerce, § 72 — Telegraph company — Federal and state Commission jurisdiction.

4. The power and authority of the Federal Communications Commission over a telegraph company rendering both interstate and intrastate service by means of the same facilities supersedes that of the state Commission, since the state's power to regulate and promote the intrastate service may not be exercised in such a way as to prejudice interstate commerce, p. 103.

APPEARANCES: Hugh S. Jenkins and Herbert S. Duffy, Attorneys General, Kenneth B. Johnston, Assistant Attorney General, Harry G. Fitzgerald, Jr., Special Counsel, Columbus, for plaintiff; Vorys, Sater, Seymour & Pease, Columbus, John H. Waters, General Attorney, New York city,

Wm. G. H. Atcheson, Assistant General Attorney, New York city, for defendant; Frederick G. Hamley and Austin L. Roberts, Jr., Washington, D. C., for National Association of Railroad and Utilities Commissioners, amicus curiae.

GESSAMAN, J.: This case is before the court upon the demurrer of the plaintiff to the answer. The ground upon which plaintiff bases its demurrer is that the answer is insufficient in law to constitute an answer to the relief prayed for by the plaintiff.

The action has been brought by the state of Ohio through the attorney general on behalf of the Public Utilities Commission of Ohio (hereinafter referred to as PUCO). The petition alleges in substance that the defendant is a common carrier of messages in intrastate commerce within the state of Ohio and as such is subject to the jurisdiction of the state of Ohio and to the regulation of the PUCO; that on or about April 1, 1947, it came to the attention of PUCO that the defendant had by application to the Federal Communications Commission (hereinafter referred to as FCC) proposed to discontinue, abandon, and substitute its Class 1–B telegraph offices at Bellefontaine, Delphos, Lebanon, Marysville, Mt. Gilead, and Ottawa, Ohio, and to substitute service therein by local telephone companies under the management of the Telephone Service Company of Ohio; that the defendant had made no application therefor to the PUCO and such proposed action "affects local business of transmitting telegraphic messages between points in Ohio"; that such proposed action might be and could be unjust, unreasonable, and discriminatory and the rights and interests of citizens of Ohio appeared to be affected thereby and that it is the duty and obligation of PUCO to determine whether such proposed change is "an abandonment in service requiring application to, hearing by, and order of said Utility Commission"; that on April 22, 1947, upon its own motion PUCO ordered the defendant to show cause why an application for said proposed action should not be filed with PUCO "as required by § 504-3, General Code"; that a hearing was had upon said order at which time the defendant appeared by counsel for the purpose of denying the jurisdiction of the state of Ohio and PUCO over the proposed change; that "after proper hearing and consideration of all issues involved therein," PUCO found that the proposed change "is abandonment, substitution, or change in service as contemplated by §§ 504–2 and 504–3 of the General Code, requiring application to and approval of the PUCO in so far as transmitting of intrastate messages are concerned"; that PUCO further directed the defendant to file an application with and receive approval of the PUCO "prior to making the contemplated or proposed abandonment or change in service to be rendered to the public in the State of Ohio"; that the defendant did not appeal from any of said orders and that therefore they have become final and effective; that the defendant has entered into two contracts with the Telephone Service Company of Ohio by which it proposes to carry into effect the anticipated changes.

It is further alleged that the defendant filed its application No. T–D–770 on December 27, 1946, with

FCC under § 214 of the Communications Act of 1934, 47 USCA § 214, wherein a request was made for authority of FCC to make the proposed change; that as a result of said application and the hearing thereon, FCC issued a proposed report on February 13, 1948, recommending the proposed change and that an appropriate order and authorization for the same will be issued.

It is further alleged that defendant has and will continue to refuse to comply with the above orders of PUCO and that unless restrained by this court, it will consummate its abovementioned agreements with Telephone Service Company of Ohio and will immediately proceed to make the proposed change already referred to.

Plaintiff prays that the defendant be enjoined from proceeding under said contracts with the Telephone Service Company of Ohio and from making the proposed change "without first complying with the lawful order of June 17, 1947, of the PUCO and the laws of the state of Ohio."

In its answer the defendant admits that the action is brought upon behalf of the PUCO; that the order of April 22, 1947, was issued by PUCO; that a hearing was held thereon on May 14 and 15, 1947, at which time defendant appeared by counsel for the purpose of denying jurisdiction of the state of Ohio and PUCO; that PUCO found that the proposed change "is abandonment, substitution, or change in service"; that PUCO directed the defendant to file an application with and receive approval of the PUCO for the proposed change; that defendant has entered into two contracts with the Telephone Service Company of Ohio to which we have already referred and that the defendant has filed its application No. T–D–770 with FCC for authority to make such change and that the proposed report of FCC was issued as alleged in the petition.

The defendant generally denies all allegations of the petition which it has not expressly admitted to be true. The defendant alleges in its answer that it is and for many years has been engaged as a common carrier in the transmission of messages for hire in and between all of the states of the United States and is engaged in interstate, intrastate, and foreign commerce; that on December 27, 1946, it filed its application, to which we have already referred, with FCC; that the services "for the discontinuance of which defendant made application are services rendered in the transmission of messages and service incidental thereto in interstate and intrastate commerce" and "the intrastate services and the interstate services are in all respects alike except in point of origin or destination and said services are furnished by means of offices, equipment, and personnel, identical use of which is made in the transmission of messages incidental thereto, whether such messages and incidental service are in intrastate commerce or interstate commerce"; that in its application with FCC the defendant proposed to "continue to render its services in the transmission of messages and services incidental thereto in interstate and intrastate commerce, such services to be provided through teleprinter agency offices operated by local telephone companies, each under the management of the Telephone Service Company of Ohio"; that subsequent to the filing

of said application FCC caused notice of the filing of the application and the date of the hearing thereon to be served upon the governor of Ohio and PUCO with leave to both of them to be heard in said proceedings and that PUCO entered its appearance and did participate in the hearing of said application; that on or about June 7, 1948, FCC issued its report and found that neither the present nor future public convenience and necessity will be adversely affected by the granting of the application of the defendant and thereupon entered its order and authorization granting of the same. Allegations are also made relative to 47 USCA § 214(a–c) to which we shall later direct our attention. The defendant further alleges that PUCO has no power or authority to regulate or attempt to regulate "the discontinuance, reduction, impairment, or abandonment of the services furnished by defendant in the six communities already referred to"; that whatever the power and authority of PUCO may have been prior to March 6, 1943, the Congress of the United States by the enactment of the Communications Act of March 6, 1943, has preëmpted the field of regulation of the telegraph business and industry, not only in interstate commerce but likewise in intrastate commerce in so far as the same concerns the discontinuance, reduction, or impairment of telegraph service and the sole and exclusive regulatory body having jurisdiction over such phase of the telegraph business or industry is now the Federal Communications Commission.

The defendant further alleges that since the adoption of the Communications Act of 1934 (Federal) as amended by the Act of March 6, 1943, 47 USCA § 151 et seq., and with respect to the provisions of the General Code of Ohio which plaintiff claims govern the defendant in the proposed change, "if those provisions are construed as requiring defendant telegraph company to apply to and to obtain from the PUCO permission to discontinue, reduce, or impair telegraph service, they are in direct conflict with the commerce clause of the Constitution of the United States and with the Federal Communications Act as amended"; that the June 17, 1947, order of PUCO is in direct conflict with the commerce clause and also with the Federal Communications Act, as amended. To this answer, as we have already pointed out, the plaintiff has demurred on the ground that the facts alleged in the answer are insufficient to constitute a defense.

The questions raised, both of which have been discussed very fully by counsel for both parties and by counsel for the National Association of Railroad and Utilities Commissioners, amicus curiae, in support of the demurrer, are these:

1. Do §§ 504–2 and 504–3 of the General Code of Ohio require the defendant to secure PUCO approval for the particular changes which the defendant proposes to make?

2. Has Congress preëmpted the field of regulation of such cases?

As to Question No. 1

[1] The pertinent provisions of §§ 504–2 and 504–3 of the General Code of Ohio are as follows:

"Section 504–2. . . . and no public utility as defined in § 614-2a of the General Code furnishing service or facilities within the state of Ohio, shall

abandon or be required to abandon or withdraw any . . . telegraph line . . . or any portion thereof . . . or the service rendered thereby . . . except as provided in § 504–3. Any . . . public utility violating the provisions of this section shall forfeit and pay into the state treasury not less than $100, nor more than $1,000, and shall be subject to all other legal and equitable remedies for the enforcement of the provisions of this act."

"Section 504–3. . . . any such public utility . . . desiring to abandon or close, or have abandoned, withdrawn, or closed for traffic or service all or any part of such line or lines, . . . shall first make application to the Public Utilities Commission. . . . Upon the hearing of said application said Commission shall ascertain the facts, and make its finding thereon, and if such facts satisfy the Commission that the proposed abandonment, withdrawal, or closing for traffic or service is reasonable, having due regard for the welfare of the public and the cost of operating the service or facility, they may allow the same; otherwise it shall be denied, or if the facts warrant, the application may be granted in a modified form. . . ."

If PUCO has any jurisdiction over the proposed change, that jurisdiction must be found in §§ 504–2 and 504–3 of the General Code, commonly referred to as the Miller Act. That fact is admitted by all counsel concerned with this case.

It appears to the court to be quite clear that the inhibition imposed by the General Assembly in § 504–2, General Code, is against the abandonment by a public utility of (as fas as we are here concerned) a telegraph line or a portion thereof or of the service rendered thereby, for the word "abandon" is specifically used in that section. There is no reference to an alteration or to a change or to a substitution of the means to be used for rendering the service. The word "abandon" is again used in § 504–3, General Code and as far as we are concerned in this case, the only positive requirement demanded of a public utility in that section is that before it *abandons* or *closes* any part or all of its line or lines, application therefor (that is, for an abandonment or a closing of the line or lines) must be made to PUCO and its consent therefor obtained. Therefore, it appears to the court that the question here presented is whether or not the proposed change by the defendant constitutes an abandonment.

[2] As we have already pointed out, and there is no dispute about the facts, the proposed changes at the towns to which we have already referred, will amount to the following: The defendant will close its own offices, known as Class 1-B offices, and the teleprinter machines and their operators will move from the present offices of the defendant to space set aside for them in the near-by telephone company offices, and the same direct telegraph services now tied into these machines in the Class 1-B offices will be tied into them in their new locations. All messages, both in-coming and out-going, will be transmitted over the same wires and machines as before and will be sent and received by the same operators. The only difference will be that the offices of the defendant in these respective towns will be closed; that certain supervisory and other help now em-

ployed therein will be eliminated or transferred and that the operators of the teleprinter machines and the messengers, etc. will be paid directly by the telephone company instead of by the defendant. In all other respects the service now rendered by the defendant to these communities will be continued. The *means* by which telegraph service has been rendered to these communities will be slightly altered. We consider it important to bear in mind that the proposed change by the defendant constitutes merely a change in the means by which the service is rendered but does not constitute a change in the service.

Numerous cases have been cited to the court by counsel for the plaintiff, in all of which, jurisdiction by PUCO was sustained by the supreme court of Ohio. We shall not add to the length of this opinion by indulging in a detailed review of these cases. Suffice it to say that all of them involve a change in or abandonment of the service itself or a part of it. We are of the considered opinion that the situation here involved is very similar to that which was presented to the supreme court in the case of the Pittsburgh & W. V. R. Co. v. Public Utilities Commission (1929) 120 Ohio St 434, 166 NE 372. In that case the Wheeling and Lake Erie Railway Company applied to the PUCO for authority to abandon its then existing Ontario street passenger station in the city of Cleveland and a portion of its railroad tracks extending northerly from Eagle avenue, a distance of 1,035 feet to the northerly terminus of its road in said city. The reason for the proposed change was that The Wheeling and Lake Erie Railway Company had entered into an agreement with the Cleveland Union Terminals Company for passenger station facilities and service in the new Cleveland union depot. This new union depot which was then in the process of construction was adjacent to the Ontario street station of Wheeling and Lake Erie and immediately north thereof. The portion of the Wheeling and Lake Erie tracks proposed to be abandoned had theretofore seen used for the sole purpose of reaching the Ontario street station. The application was dismissed by PUCO on the ground of want of jurisdiction. Appeal was taken from this order to the supreme court by the Pittsburgh and West Virginia Railroad Company, a connecting carrier and also a stockholder of Wheeling and Lake Erie. In considering the question involved, the supreme court had this to say, 120 Ohio St. at pp. 436, 437, 166 NE at p. 374 of its opinion:

"We are of the opinion that the Public Utilities Commission was correct in its conclusion that, in view of the fact that the applicant does not propose to discontinue operation into a downtown passenger station in Cleveland, or withdraw or impair its service to the public in that respect, but, on the contrary, proposes to secure and furnish to the public passenger station facilities and service, §§ 504-2 and 504-3, General Code, have no application to the situation thus presented. The very evident purpose of these statutory provisions was to secure and safeguard the interests of the public, and prevent the *abandonment or withdrawal of a service,* thereby depriving the public of facilities and service theretofore enjoyed, and to which it was entitled." (Italics ours.)

And further in the same opinion at p 437 of 120 Ohio St, at p. 373 of 166 NE the court says:

"Certainly no one would argue that an application need be made to the Public Utilities Commission for permission to erect a new passenger station, or that it was contemplated to confer on the Public Utilities Commission any such jurisdiction by statute. The plan proposed is no more an abandonment of passenger station facilities than would be the substitution of a new passenger station by the Wheeling & Lake Erie upon the very location now occupied by its passenger station."

The case at bar presents, as we have said, a similar situation. The proposed change does not contemplate or involve the termination of telegraphic service either to or from the communities involved. It proposes only to change the station in each of these communities at which messages are both sent and received. In that respect it is similar to the substitution of one passenger station for another as was involved in the Wheeling and Lake Erie Case. The same messages can be sent and the same messages can be received as under the present arrangement. The station at which they are sent and received will be the offices of the local telephone company instead of the present Class 1-B offices of the defendant. Therefore, while the present office or station is being abandoned, that abandonment affects only the means by which telegraphic messages are sent and received but does not affect the telegraphic *service* itself, either incoming or outgoing.

The situation and question here presented are so similar to those involved in the Wheeling and Lake Erie Case, *supra*, that we cannot escape the conclusion that the proposal by Western Union involves only a relatively minor change in the means by which telegraphic messages are sent and received and does not affect the telegraphic service to and from these communities and therefore does not constitute an abandonment or withdrawal of a service which the Miller Act was enacted to prevent. It, therefore, follows that there is no duty upon Western Union to make any application to PUCO for the proposed change and since the duty does not exist, it therefore follows that PUCO was without any authority to issue its order of April 22, 1947, in which it attempted to require Western Union to show cause why an application for said proposed action should not be filed with PUCO. With respect to that order, we feel that we should point out that counsel for the plaintiff has not referred the court to any authority lodged with PUCO for the adopting of the order of April 22, 1947, even granting that PUCO had jurisdiction in the matter.

Therefore, our answer to the first question propounded above is that §§ 504-2 and 504-3, General Code do not require the defendant to secure PUCO approval for the changes which the defendant proposes to make and for the reasons which we have given, the demurrer is overruled.

As to Question No. 2

[3, 4] It is urged by counsel for the defendant that the intrastate and interstate services of Western Union being inextricably intertwined, the intrastate service must be controlled in order to

prevent an unreasonable burden on interstate service. In the answer the defendant has alleged that Congress, by the Act of March 6, 1943, "has preëmpted the field of regulation of the telegraph business and industry, not only in interstate commerce but likewise in intrastate commerce insofar as the same concerns the discontinuance, reduction or impairment of telegraph service and the sole and exclusive regulatory body having jurisdiction over such phase of the telegraph business or industry is now the Federal Communications Commission."

Therefore, counsel for the National Association of Railroad and Utilities Commissioners, amicus curiae, state the question in this manner at page 2 of their brief:

"The primary issue which is before this court is whether the authority and jurisdiction of the Public Utilities Commission of the state of Ohio to regulate the discontinuance, reduction, impairment, or abandonment of intrastate telegraphic service or facilities, has been superseded by Federal regulation."

The consideration of this question requires the consideration of several sections of the Federal Communications Act as amended on March 6, 1943, 47 USCA § 151 et seq.

The purposes of the act have been stated by Congress in § 151 which reads in part as follows:

"For the purpose of regulating interstate and foreign commerce in communication by wire . . . so as to make available, so far as possible, to all the people of the United States a rapid, efficient, nation-wide, and world-wide wire . . . communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire . . . communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire . . . communication, there is hereby created a Commission to be known as the 'Federal Communications Commission,' which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter."

Congress then provided as follows in § 152:

"(a) The provisions of this chapter shall apply to all interstate and foreign communication by wire. . . ."

Section 214 provides in part as follows:

"(a) . . . No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby. . . .

"(b) Upon receipt of an application for any such certificate, the Commission shall cause notice thereof to be given to, and shall cause a copy of such application to be filed with, the Secretary of the Army, the Secretary of the Navy, and the governor of each state in which . . . such discontinuance, reduction, or impairment of service is proposed, with the right to those notified to be heard; and the

Commission may require such published notice as it shall determine.

"(c) The Commission shall have power to issue such certificate as applied for, or to refuse to issue it, or to issue it for a portion or portions of . . . discontinuance, reduction, or impairment of service, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. After issuance of such certificate, and not before, the carrier may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the . . . discontinuance, reduction, or impairment of service covered thereby."

From a consideration of these sections it is quite obvious that the absolute control of communication by wire in interstate and foreign commerce has been lodged by Congress in the Federal Communications Commission. Granting that this is correct, it is urged by counsel for the state that since Western Union in the operations here involved is engaged not only in interstate commerce but also in intrastate commerce, it must not only secure the approval of FCC but also that of the PUCO. It is the opinion of the court that the answer to that contention is obvious on its face, for if counsel for the state is correct, then one of two situations could result; (1) Western Union could be prevented from complying with the certificate issued by FCC by an adverse decision by PUCO, or (2) although complying with the certificate issued by FCC, Western Union could be compelled by PUCO to also continue the operation of its Class 1-B offices thereby nullifying the effect and purpose of the FCC certificate. The power of PUCO to require the defendant to apply for approval would carry with it the power to deny the right to make the change. In either event the very purpose of the Federal Communications Act could be nullified by or at least controlled by any one of the state agencies of the forty-eight states.

A large number of authorities have been submitted to the court by counsel in this case, many of which we feel are not decisive of the question involved. In the opinion of the court the case in point is that of Colorado v. United States (1926) 271 US 153, 70 L ed 878, 46 S Ct 452. That suit was instituted by the state of Colorado, to enjoin and set aside, in part, an order of the Interstate Commerce Commission issued February 11, 1924. The order was a certificate by that Commission permitting the abandonment by the Colorado and Southern Railway Company of a branch line located wholly within the state of Colorado. The railway company was a Colorado corporation. It owned and operated in intrastate and interstate commerce a railroad system located partly in Colorado and partly in other states. The branch line in question was constructed under the authority of Colorado and was acquired by the company. It was a narrow gauge line and was physically detached from other lines of the company but it was operated in both intrastate and interstate commerce as a part of the system of the company by means of connections

with other railroads. The certificate to abandon the line was granted by the Interstate Commerce Commission on the ground that the local conditions were such that public convenience and necessity did not require continued operation; that for years operation of the branch had resulted in large deficits and for other reasons, one of which was that "continued operation would constitute an undue burden upon interstate commerce." 271 US at p. 160, 46 S Ct at p. 453. The attorney general of Colorado contended, among other things, that neither the Interstate Commerce Act nor Transportation Act of 1920, 49 USCA § 1 et seq., took away from the state the right to regulate and control its intrastate commerce and to the extent that they, or either of them attempted to do so, they were unconstitutional, 271 US at pp. 154, 155. The opinion in this case was written by Mr. Justice Brandeis and was unanimous. In discussing the claim of the attorney general, we find the following at pp.162, 163 and 164 of the opinion in 271 US at p 453 of 46 S Ct:

"In the case at bar no question of the reasonableness of the state's action can arise, because the state has not issued any order; it has merely protested against the Commission's releasing this Colorado corporation from the primary duty voluntarily assumed of maintaining some service on the branch. This, the Commission cannot do as respects intrastate commerce. Transportation Act 1920 did not purport to take from the state its powers to control intrastate commerce. Nor did it confer upon the Commission power to release a corporation chartered by the state from its primary obligation to furnish service. If paragraph 18 of § 1 should be construed as authorizing the Commission to do so without the consent of the state, the provision would be unconstitutional. Compare Texas v. Eastern Texas R. Co. 258 US 204, 217, 66 L ed 566, PUR1922D 277, 42 S Ct 281. Such is the argument.

"The argument rests upon a misconception of the nature of the power exercised by the Commission in authorizing abandonment under paragraphs 18–20. The certificate issues not primarily to protect the railroad, but to protect interstate commerce from undue burdens or discriminations. The Commission by its order removes an obstruction which would otherwise prevent the railroad from performing its Federal duty. Prejudice to interstate commerce may be effected in many ways. One way is by excessive expenditures from the common fund in the local interest, thereby lessening the ability of the carrier properly to serve interstate commerce. Expenditures in the local interest may be so large as to compel the carrier to raise reasonable interstate rates, or to abstain from making an appropriate reduction of such rates, or to curtail interstate service, or to forego facilities needed in interstate commerce. Likewise, excessive local expenditures may so weaken the financial condition of the carrier as to raise the cost of securing capital required for providing transportation facilities used in the service, and thus compel an increase of rates. Such depletion of the common resources in the local interest may conceivably be effected by continued operation of an intrastate branch

in intrastate commerce at a large loss.

"The sole objective of paragraphs 18–20 is the regulation of interstate commerce. Control is exerted over intrastate commerce only because such control is a necessary incident of freeing interstate commerce from the unreasonable burdens, obstruction, or unjust discrimination which are found to result from operating a branch at a large loss. Congress has power to authorize abandonment, because the state's power to regulate and promote intrastate commerce may not be exercised in such a way as to prejudice interstate commerce. The exertion of the Federal power to prevent prejudice to interstate commerce so arising from the operation of a branch in intrastate commerce is similar to that exerted when a state establishes intrastate rates so low that intrastate traffic does not bear its fair share of the cost of the service. (Wisconsin R. Commission v. Chicago, B. & Q. R. Co. 257 US 563, 66 L ed 371, PUR1922C 200, 42 S Ct 232, 22 ALR 1086; Nashville, C. & St. L. R. Co. v. Tennessee (1923) 262 US 318, 67 L ed 999, 43 S Ct 583), or when the state authorities seek to compel the erection of a union station so expensive as unduly to deplete the financial resources of the carriers (California R. Commission v. Southern P. Co. 264 US 331, 68 L ed 713, PUR1924D 246, 44 S Ct 376), or when one railroad seeks to construct an intrastate branch line, which will deplete its own financial resources or those of another intrastate carrier (Texas & P. R. Co. v. Gulf, C. & S. F. R. Co. (1926) 270 US 266, 70 L ed 578, 46 S Ct 263). The jurisdiction exercised by the Commission in these cases is in essence that which was invoked in The Shreveport Case. [Houston, E. & W. T. R. Co. v. United States] (1914) 234 US 342, 58 L ed 1341, 34 S Ct 833, a power to prevent unjust preference to particular intrastate shippers or localities at the demonstrated expense of interstate commerce. But there is a broader basis for Federal control.

"This railroad, like most others, was chartered to engage in both intrastate and interstate commerce. The same instrumentality serves both. The two services are inextricably intertwined. The extent and manner in which one is performed, necessarily affects the performance of the other. Efficient performance of either is dependent upon the efficient performance of the transportation system as a whole."

And also the following language at pp. 165 and 166 of the opinion, in 271 US, at p. 455 of 46 S Ct:

"The exercise of Federal power in authorizing abandonment is not an invasion of a field reserved to the state. The obligation assumed by the corporation under its charter of providing intrastate service on every part of its line within the state is subordinate to the performance by it of its Federal duty, also assumed, efficiently to render transportation services in interstate commerce. There is no contention here that the railroad by its charter agreed in terms to continue to operate this branch regardless of loss. Compare Texas R. Commission v. Eastern Texas R. Co. 264 US 79, 68 L ed 569, PUR1924C 407, 44 S Ct 247. But even explicit charter provisions must yield to the paramount power of Congress to regulate interstate commerce. New York v. United States, 257 US 591, 601, 66 L ed 385, PUR

1922C 455, 42 S Ct 239. Because the same instrumentality serves both, Congress has power to assume not only some control but paramount control in so far as interstate commerce is involved. It may determine to what extent and in what manner intrastate service must be subordinated in order that interstate service may be adequately rendered. The power to make the determination inheres in the United States as an incident of its power over interstate commerce. The making of this determination involves an exercise of judgment upon the facts of the particular case. The authority to find the facts and to exercise thereon the judgment whether abandonment is consistent with public convenience and necessity, Congress conferred upon the Commission."

At p. 168 of the opinion in 271 US at p. 456 of 46 S Ct it is said that:

"The sole test prescribed is that abandonment be consistent with public necessity and convenience. In determining whether it is, the Commission must have regard to the needs of both intrastate and interstate commerce."

The Colorado Case, *supra,* of course dealt with a railroad and with the Transportation Act but a comparison of that act with the Communications Act discloses a marked similarity to the extent that one might even conclude that many of the provisions of the Communications Act were copied from the Transportation Act. A consideration of the provisions of the two acts has led the court to the conclusion that the principles enunciated in the Colorado Case are applicable to the case at bar, that is to say, that since in the communities involved, both intrastate and interstate messages are now received and sent by means of the same wires and other facilities of Western Union, the two services are inextricably intertwined and the extent and manner in which one is performed necessarily affects the performance of the other. It follows, therefore, that the efficient performance of either is dependent upon the efficient performance of the system as a whole. Therefore, the power and authority of FCC supersede that of PUCO for the reason that "the state's power to regulate and promote intrastate commerce may not be exercised in such a way as to prejudice interstate commerce." 271 US at p. 163, 46 S Ct at p. 454.

It is urged on behalf of the state that the language of the Federal Communications Act does not evidence any intent of Congress to supersede state authority. The intent of Congress was to regulate communications by wire in interstate and foreign commerce for the purposes set forth in § 151, *supra,* and while the express intent of Congress to supersede state authority is nowhere found in the act, it necessarily follows, applying the principles of the Colorado Case, that where the services, both intrastate and interstate, are inextricably intertwined, the state's power is superseded to the extent that it is necessary to regulate interstate commerce for the purposes and in the manner specified in the Federal Communications Act.

It is the opinion of the court, therefore, that in view of the conditions existing in the communities here involved and particularly the fact that the services of sending and receiving both intrastate and interstate messages are inextricably intertwined, the authority

of the FCC with respect to the proposed change is final and that Western Union is under no duty to apply to PUCO for its permission to make the change. In this respect, the power and authority of FCC supersede that of PUCO—if any authority of the latter in the premises, did exist. Our answer to question number two, therefore, is in the affirmative.

For the reasons given, it is our opinion that the answer states sufficient facts to constitute a defense. The demurrer is overruled.

NORTH CAROLINA UTILITIES COMMISSION

Re Southern Bell Telephone & Telegraph Company

Docket No. 4574
April 22, 1949

PETITION *of telephone company for a general intrastate rate increase; approved.*

Return, § 111 — Telephones.

1. A telephone utility was allowed an average rate of return of 6.08 per cent per annum on its intrastate net investment, p. 115.

Return, § 22 — Factors to be considered — Costs — Finances — Value of service.

2. The Commission, in arriving at a rate of return for a telephone company, should give consideration to its financial history; past earnings compared with present earnings; cost of service under existing high prices; ratio of debt capital to equity capital; current cost of capital; general market trends in the cost of labor, materials, and capital; opportunity of investors to invest in other business undertakings of comparable stability and soundness; opportunity for growth and expansion and public demand; protection against destructive competition; value of service; and probability of diminishing returns from rates and charges that approach burdensome proportions, p. 116.

Expenses, § 87 — Payments under license contract — Telephone company.

Statement that the Commission approves of a reduction in the cost of services received by a local telephone company under a license contract with its parent system from 1½ per cent to one per cent of gross revenues and favors a further reduction in view of a continuous increase in gross revenue, mainly from new business and from rate increases, p. 114.

Revenues, § 1 — Sources of additional telephone revenue.

Statement that a telephone company in need of additional revenue should tap new sources of revenue such as interstate toll business and the division of toll revenue among participating companies, p. 114.

Discrimination, § 181 — Toll charges — Intrastate telephone service.

Statement that there is no legitimate reason why an intrastate telephone message over a given distance should cost more than an interstate message over the same mileage, p. 115.

APPEARANCES: For the Petitioner: Jefferson Davis, Attorney, Atlanta, Georgia, Willis Smith, Attorney, Raleigh, and Taylor and Kitchin, Attorneys, Wadesboro, for the petitioner; none for the protestants.

By the COMMISSION: This is a proceeding instituted by the Southern Bell Telephone and Telegraph Company for a general increase in its North Carolina intrastate telephone rates and charges. The additional gross intrastate revenue demand is $3,425,500 per annum to be apportioned among the telephone users and the different classes of service in such amounts as the Commission may find to be equitable.

The case was heard before the Commission in Raleigh on January 4, 5, and 6, 1949; and a further hearing was held on March 2, 1949, on a supplemental petition filed after the close of the hearing in January. Said supplemental petition related only two items of expense, the exact amount of which was not available at the time of the hearing on its original petition, one item being a general wage increase which amounted to an additional North Carolina intrastate wage expense of $605,200 per annum; the other being a general increase in depreciation rates which amounted to an additional North Carolina intrastate depreciation expense of approximately $100,200.

Notice of the time and place of said hearing, the purpose thereof, and the amount of increases involved, was given to the public and to telephone subscribers by advertisement in newspapers having a general circulation in the cities, towns, and communities served by the company. Said newspapers also on several occasions gave publicity throughout the state of the time and place of said hearings and the increases in telephone rates involved.

No protests were filed to either the original or supplemental petition, and no protestants appeared at either of said hearings.

Contentions

The petitioner contends, and offered exhibits and oral testimony tending to show, that it must earn at least 6.66 per cent per annum on its North Carolina intrastate net investment if it is to maintain its credit and attract additional capital as needed on reasonable terms; that its rates and charges for North Carolina intrastate service are unjust, unreasonable, and insufficient to maintain its operations because of increases in operating expenses and particularly because of increases in the cost of equipment, materials, supplies, and wages; that its plans for new construction and the expansion of its service to meet the demands made upon it cannot be carried out unless the rates and charges authorized are sufficient to pay the cost and reasonable return to investment required.

The Bell System

The American Telephone and Tele-

graph Company, Western Electric Company, Bell Telephone Laboratories, The 195 Broadway Corporation, and nineteen operating companies constitute the Bell System. The American Company owns and operates long-distance lines through interconnections with the operating companies of the system. It owns all or a majority of the capital stock of the nineteen operating companies, 99.8 per cent of the capital stock of the Western Electric Company; and the American Company and the Western Electric Company each own 50 per cent of the stock of Bell Telephone Laboratories.

The American Company, in addition to its long-distance operations, is the financing unit of the System. It supplies the operating companies, including Southern Bell, with construction capital and with other current cash needs. When these loans build up to a substantial sum, they are repaid by the issuance of common stock to the American Company.

The Western Electric Company is a supply unit of the system. It manufactures telephones, switchboards, cables, wire, and other equipment used in the telephone business and sells to both Bell and non-Bell companies. It has large warehouses throughout the country and acts as buyer from a large number of manufacturers of a variety of finished products for resale to the operating companies. Its sales to Bell customers amounted to over $900,000,000 in 1947; and its estimated sales for 1948 exceed $1,000,000,000.

Bell Telephone Laboratories is the research or scientific and development unit of the system; and The 195 Broadway Corporation is the general headquarters of the system.

At the end of 1947, there were approximately 34,900,000 telephones in the United States, of which 28,500,000 or about 82 per cent are in the Bell System. At that time it had on payroll over 666,000 employees and had about 736,000 stockholders whose combined investment amounted to $5,760,000,000. The system handles about 115,000,000 telephone conversations per day.

Southern Bell

The Southern Bell Telephone and Telegraph Company is wholly owned by the American Company. It owns and operates local exchanges and provides interstate and intrastate long-distance service in North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Tennessee, and Kentucky. It owns and operates 62 local exchanges in North Carolina and had 252,000 company-owned telephones in service in North Carolina as of September 30, 1948, which was an increase of about 92,000 since the beginning of 1946, or about 58 per cent for the period.

Its recent expenses in wage increases to its North Carolina employees are as follows:

1945	$993,000
1946	1,318,000
1947	826,000
1949	605,200
Total	$3,742,200

Its construction costs in North Carolina from 1936 to 1940 were approximately $2,265,000 per annum. Its construction from 1940 to 1946 was largely in connection with the war effort. In 1946 its construction

cost amounted to $5,881,000; in 1947, to $13,552,000, and approximately $15,250,000 in 1948, or approximately $34,600,000 for the 3-year period.

During this 3-year period, the dollar volume of construction was about equal to the total plant in service in 1945. This construction cost includes all types of construction; that is, central office buildings, outside plant, and extensions of service. The construction program was made necessary by the unprecedented and ever-increasing demand for telephone service following the war. At the end of 1945, the company had 20,500 applications for service in North Carolina. From the end of 1945 to September 30, 1948, it made 146,800 installations and still had on hand 35,000 applications for telephone service in North Carolina. Ordinary plant margins were wholly insufficient to carry the added load, necessitating substantial enlargements and in some cases complete replacement of all the company's facilities.

The increase in the cost of supplies and materials used in these installations and in the construction of lines has been very substantial. For example, from 1940 to October, 1948, the cost of telephone sets has increased 6 per cent; exchange switchboards, 66 per cent; cable terminals, 82 per cent; lead covered cable, 84 per cent; copper line wire, 85 per cent; iron line wire, 89 per cent; steel strand, 92 per cent; creosoted pine poles, 129 per cent and ten pin cross arms, 147 per cent. These are materials most frequently used in such installations and in new construction. A very large portion of this rehabilitation and expansion program has been carried out since the close of the war, or since 1945, which explains why the dollar volume of construction in North Carolina since the beginning of 1946 is about equal to the total plant in service in 1945. It came in a period of great need and great demand for telephone service but in a period of very high labor and material costs. Higher rates could have been and were foreseen. The average per telephone investment was $212 as of September 30, 1947; and for the following year, ending September 30, 1948, the average investment per telephone was $378. It is the position of the company that so long as per-telephone investment continues to increase, that higher rates necessary for fair return will continue; or, in other words, that higher rates will continue so long as new plant that is being added costs more than the existing plant.

Rate of Return

The petitioner offered in evidence some 40 exhibits made from its books and records which are required to be kept in strict accordance with the rules and regulations of the Federal Communications Commission, and offered oral testimony at great length and in great detail by the officials of the company and contends that the Commission should find from said exhibits and oral testimony that its compensation for property used for the convenience of the public is insufficient, unjust, and unreasonable. It was supported in its contention by Mr. Glenn E. Anderson, an investment banker of Raleigh, who testified that he had been in business for fourteen years and during that time had served as president of the Securities Dealers of North

and South Carolina and on various committees of the National Association of Securities Dealers and Investment Bankers Association of America. He said he was familiar with public utility financing and that during the course of his business in buying and selling securities he had occasion within the last two years upon inquiries from investors to make a study and write a report "on the earnings of the Bell System because of the increased cost of labor and materials and the increased demand for telephone service and equipment." He further stated that his study and report "showed that from the end of 1936 until the end of 1946 the plant of the system at the end of 1936 was equal to approximately $4¼ billion; and in the period at the end of December, 1946, the company added through depreciation and excess earnings over dividends and otherwise approximately $3 billion to that additional plant, and yet in the year 1946 it was able to earn only $24,000,000 more than it earned in the year 1936, or in other words less than one percent on the $3 billion of added capital that had been put into the system during that 11-year period."

Mr. R. R. Stubbs, vice president of the company in the finance department, testified that while the system funds for working capital and construction are reflected on the American Company books, they are as readily available to Southern Bell as if banked in the Southern Bell's account and represented by stocks, bonds, or notes, on the Southern Bell balance sheet; that Southern Bell's financing is in the nature of a secondary financing operation upon which the primary financing is that of the system as a whole; that the ratio of one-third debt and two-thirds equity capital is sound and proper capital structure for the Bell System; that it is recognized that both the American Company bonds and the Associated Company bonds sell on the basis of the System credit rating rather than on the basis of the individual company credit; that the conversion of the convertible bond issues of 1946 and 1947 have practically ceased because the holder of this bond can make an outlay that will give him a 12½ per cent to 15 per cent return on the additional investment; that based on the company's studies covering the period from 1920 to 1947 which shows the earnings at the rate of 7.72 per cent were not more than were sufficient to maintain the integrity of the stockholder's investment as an average over a long period of time and based on the knowledge that the Bell System requires a great deal of capital and that it must raise a great deal of that capital in the form of equity in order to correct its precarious debt position and in order to provide for carrying on the construction program, earnings at the rate of 9 per cent on the equity capital, if associated with debt ratio of 36½ per cent, would be required to attract additional equity capital in the quantities needed.

As to the value of the property being used for the convenience of the public and the rate of return, the petitioner selected a period of eight months ending September 30, 1948, as being representative. It was explained that this was the latest and longest available period of sufficient length to level out incidental and seasonal fluctuations that might be present in a shorter peri-

od; and also that it was a period in which there were no changes in rates, no changes in the general level of wages, no strikes, or other unusual factors tending to distort normal operating results. The gross average North Carolina intrastate investment for this period and the operating results were shown by exhibits and oral testimony to be as follows:

February–September, 1948	Interstate and Intrastate	Intrastate Only
Average Investment	$56,046,311	$46,159,062
Operating Revenues	13,386,110	10,555,850
Operating Expenses	12,159,959	9,623,468
Net Operating Income	1,225,151	932,383
Per Cent Return per Annum	3.28%	3.03%

A computation shows that the per cent return on the interstate average investment raised to an annual basis was 4.43 per cent.

It appears from exhibits offered that the North Carolina intrastate net average investment for the same period, February–September, 1948, and the operating results were as follows:

February–September, 1948	
Net Average Investment	$36,325,510
Operating Revenues	10,555,850
Operating Expenses	9,623,468
Net Operating Income	932,382
Per Cent Return Per Annum	3.85%

For the same period, February–September, 1948, the exhibits set out North Carolina average intrastate invested capital as 7.4947 per cent of the company total, or $35,125,258. Using this latter amount as a rate base and North Carolina intrastate net operating income for the period raised to an annual basis produces a rate of return of 3.98 per cent.

The exhibits set out North Carolina intrastate net investment at the end of September 30, 1948, as $38,914,417. The petitioner has used this as a rate base to show that for the said petitioner to realize its full earnings requirement of 6.66 per cent additional annual gross revenue of $3,429,500 is needed. This computation allows $762,433 for the recent increase in wage and depreciation rates, $82,299 for the reduction in license contract costs, and $721,618 for the depressing effect of current high-cost construction on the rate of earnings.

Certain testimony discloses that the cost for services received by the applicant under the license contract was reduced in October, 1948, from one and one-half per cent to one per cent of gross sales, with certain provisions attached. This is in accord with this Commission's way of thinking. However, in view of a continuous increase in gross revenue mainly from new business and rate increases this Commission strongly favors a further reduction in the cost of these services.

Two other sources of revenue which the Commission is firmly of the opinion should be tapped in these unnatural times are interstate toll business and the division of toll revenue among the participating companies. The position of this Commission has been all along that the method of separations should be amended or changed so that the end result would be increased net toll revenues for the subsidiaries and connecting companies. At the present time a coöperative committee composed of representatives of the Fed-

ral Communications Commission and tate Commissions is making a study f this matter.

As for the interstate toll business ource, present interstate toll rates are onsiderably lower than intrastate toll ates. Although this order will pro- ide the second increase in North arolina intrastate toll rates since the ermination of the last war, interstate oll rates have remained on the same evel. A partial comparison of present nterstate and intrastate toll rates now n effect is given below:

Station-to-Station
Day except Sunday

	Intrastate		Interstate	
Miles	3 Min.	Add'l Min.	3 Min.	Add'l Min.
50	.50	.15	.40	.10
100	.65	.20	.55	.15
200	.85	.25	.80	.20
300	1.10	.35	1.00	.25
400	1.20	.40	1.15	.30
500	1.40	.45	1.25	.30

It is quite apparent to this Commis- ion that the value of interstate service, f measured in present-day prices, has ncreased; and this Commission can ee no legitimate reason why a 300- ile intrastate message should cost ny more than a 300-mile interstate essage.

In a prior order of this Commission t was pointed out that this Commis- ion some years ago had petitioned the ederal Communications Commission sking that that Commission make an nvestigation of the divisions of inter- tate toll charges between the Amer- an Telephone and Telegraph Com- any and its subsidiaries. This in- estigation was made, resulting in a more favorable division of toll charges o the subsidiaries and connecting com- anies but not as much as this Com- mission thought the subsidiaries and connecting companies should have. At this time, in the opinion of this Commission, the Federal Communications Commission should revise the divisions between the American Telephone and Telegraph Company, its subsidiaries and connecting companies to the end that, if necessary, the interstate charges should be increased in order that the intrastate toll charges could be decreased so that both interstate and intrastate toll charges would be on the same level.

The petitioner in this case is hereby notified that this Commission will not again look with favor upon any increase in intrastate toll charges unless the petitioner has exhausted every remedy to obtain more toll revenue by a proceeding before the Federal Communications Commission.

Conclusion

[1] From the facts found from the foregoing testimony the Commission concludes that the petitioner has shown an urgent and definite need for additional gross revenue. While the Commission is of the opinion that the petitioner is not entitled to the full amount requested, the Commission has fixed rates and charges, which it believes are necessary if the company is to render adequate and sufficient service.

From the best estimates and calculations the Commission can make, the rates and charges which it has fixed in this case will yield additional annual gross revenue of $2,427,136 and will produce an average rate of return of 6.08 per cent per annum on intrastate net investment of $38,914,417. Full allowance was made for the wage and

depreciation expense increase, the reduction in license contract cost and Federal and state taxes.

The Commission feels that in all fairness to both subscribers and the company that it should be stated that of the $2,427,136 increase allowed, approximately 45 per cent of this amount will be paid in Federal and state taxes. This is in addition to 15 per cent Federal excise tax, which appears on the subscribers' monthly statements.

[2] In arriving at a rate of return of approximately 6 per cent—actually 6.08 based upon rates and charges shown in Appendix A [omitted herein]—the Commission has given consideration to the financial history of the company; to its earning in the past as compared with the present; to the cost of rendering service under existing high prices; to the ratio of its debt capital to its equity capital; to the current cost of capital; to the general market trends in the cost of labor, materials, and capital; to the opportunity of investors to invest in other business undertakings of comparable stability and soundness; to the opportunity for growth and expansion and to the public demand therefor; to the protection afforded against destructive competition; to the value of the service to telephone users and to the probability of diminishing returns from rates and charges that approach burdensome proportions.

In fixing the exchange rental rate in this case, the Commission has used the group method; that is, the various exchanges have been separated according to size into groups and each exchange automatically takes the rates assigned to its group. The applic tion of this method has eliminated substantial number of inequities whi have heretofore existed.

The gross sum approved has be apportioned among the various tel phone exchanges and classes of ser ice in such manner as, in the judgme of the Commission, is equitable b tween the classes of service and th ratepayers involved.

With few exceptions residenti rates have been increased in amoun ranging from 25 cents to 75 cents an business rates in amounts rangin from 25 cents to various amounts n exceeding $1.50 in any case. In som cases the rates are unchanged. The i creased rental rates in several of th larger exchanges have been to som extent offset by an increase in the si of the base rate area, which affect advantageously all subscribers of the exchanges who are now paying mile age charges.

Upon consideration of the entir record, the Commission is of the opin ion that the rates and charges set ou in Appendix A [omitted herein] here to attached, are just, reasonable, an lawful, and that the same are sufficien to enable the company to maintain an extend its telephone services in Nort Carolina and to attract such additiona capital as may be required on favorabl terms.

Wherefore, it is *ordered*, that th rates and charges in Appendix A [omitted herein] hereto attached, be and the same are hereby approved and that each and every exchang of the Southern Bell Telephone an Telegraph Company in North Caro lina shall take the rates and charge

set out therein and that said rates and charges shall become effective on all bills on and after May 1, 1949.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Monongahela Valley Water Company

Investigation Docket Nos. 12, 13
May 2, 1949

INQUIRY *and investigation upon Commission motion into water service and facilities; inquiry terminated.*

Public utilities, § 13 — What determines utility status.

1. What constitutes a particular individual a public utility is a question of fact to be determined from the evidence presented in each case as it arises, p. 119.

Public utilities, § 37 — Status of customer reselling water.

2. An individual who, for the accommodation of home owners residing beyond a water company's mains, has subscribed to water service at the end of the company's line and has prorated the bill among those drawing water from his outlet, but has neither distributed water to the public, nor undertaken to distribute or transmit it, nor received any compensation for his function, is not a public utility, p. 119.

Service, § 184 — Extensions to new areas — Obligations of utility — Cost consideration.

3. A public utility will not be required to extend its lines into scattered sections of a community which have been prematurely developed in advance of the community's normal growth where there is no rational expectation of the expenditures ever being justified and where the cost of rendering service to these areas would be prohibitive, p. 120.

By the COMMISSION: On September 13, 1948, the Commission instituted an inquiry and investigation at I. D. 12 to determine whether Arch Lhormer should apply for a certificate of public convenience as a public utility rendering water service and at I. D. 13 into the water service and facilities of Monongahela Valley Water Company.

A hearing was held on November 23, 1948, at Pittsburgh, at which time the two proceedings were consolidated for the purpose of hearing. Two witnesses appeared and testified—Arch Lhormer and S. J. Bargh, president of the Monongahela Valley Water Company.

The testimony of Arch Lhormer establishes the following facts. He is engaged in the lumber supply, real estate, and insurance businesses, all operated under the name of the Clairton Commercial Company. In 1941

he owned 23 lots in the area known as Large Heights overlooking the town of Large, Jefferson township, Allegheny county. A contractor, Charles Casperson, bought eleven of these lots and built houses thereon. Lhormer sold him the building materials and sometimes did the mortgage financing. After Casperson had completed the construction of the first three houses, the question of water service arose. Other houses in that area used cisterns. The Monongahela Valley Water Company, which is certificated to operate in this territory, was asked to extend its service to this development but refused because it was of the opinion that it could not render adequate and satisfactory service due to the high elevation. Thinking that the water pressure was sufficient to serve Large Heights, Casperson laid, and personally paid for, a one-inch line from the end of the water company's existing facilities up the hill to the lots in question. The water company agreed to let him connect his private line to its existing 2-inch line at which point it installed a one-inch meter and accepted Casperson's application for water service dated September 13, 1941, with the distinct understanding that it did not guarantee the water supply beyond the point of connection.

After the private line was installed and the connection made to the original three houses, it was discovered that there was not adequate pressure to serve satisfactorily the area at all times. Consequently, as the houses were sold (including the eight which were subsequently built), the purchasers were advised of the water situation and given the choice of connecting to the private line or digging a cistern. If they chose the former, they were specifically told they did so at their own risk as the water pressure was not adequate at all times and that Casperson would be billed by the water company and prorate the bill among the actual consumers. All of them decided to take a chance on the one-inch line. In fact, the other residents of Large Heights living in houses not built by Casperson wanted to connect on to this private line but were refused. Neither Lhormer nor Casperson, to the best of Lhormer's knowledge, ever represented to the purchasers of these houses that they would be supplied with water service, nor was water service a factor used to induce them to buy these homes. When asked whether the people would have bought Casperson's houses had they not had the choice of being served by the private line, Lhormer stated "Yes, because they would have a cistern. Most everybody up there has cisterns. . . . There's been a lot of homes built and they all have cisterns."

Lhormer testified that he did not profit in any way, either directly or indirectly, by the laying of this private line and that Casperson would have purchased the lots from him and built houses thereon regardless of water supply because the area is rural and everyone uses cisterns.

At the hearing, reference was made to a letter, dated December 15, 1941, that Lhormer had written to the Commission complaining about Monongahela Valley Water Company's refusal to extend its existing facilities to the Large Heights area. This complaint, docketed by the Commission at Informal Complaint No. 14568, was incorporated into this record by refer-

ence. When Lhormer was asked to explain that part of the letter wherein he stated, "We spent $1,000 and laid a one-inch line ourselves," he testified that he used a Clairton Commercial Company letterhead and that exact language as a favor to Casperson, thinking that by so doing the matter would be given more consideration than would a complaint registered by a small private contractor; that he, himself, had nothing whatsoever to do with the private one-inch line nor did he contribute in any way, toward the cost of installation.

Early in 1942 the water company executed a shut-off order against Casperson for nonpayment of bills and the water service was interrupted. The water company refused to restore service unless a financially responsible person succeeded Casperson. At this time residents of the houses connected to the private line asked Lhormer if he would act as their agent in this respect under a similar plan, whereby the water company would bill him and he would prorate the charge among the consumers. Lhormer agreed to do this as a favor to them. He applied to the water company for service and a turn-on order was then issued by the water company in his name. The one-inch meter was removed and a three-quarter inch meter installed in its place. Lhormer has never held himself out as a public utility. He receives no benefit whatsoever for permitting the meter to be recorded in his name. On the contrary his books of account, from which he prepared respondent's exhibit No. 2, show that as of October 1, 1948, certain of the users owed him the sum of $293.67 for water rent he has already paid for them.

[1, 2] Article I, § 2 (17b) of the Public Utility Law, Act of May 28, 1937, P. L. 1053, as amended, reads as follows:

"(17) 'Public Utility' means persons or corporations now or hereafter owning or operating in this commonwealth equipment, or facilities, for:

"(b) Diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation;"

What constitutes a particular individual a public utility is a question of fact to be determined from the evidence presented in each case as it arises. Gornish v. Public Utility Commission (1939) 134 Pa Super Ct 565, 29 PUR NS 523, 4 A2d 569.

An examination of the record discloses that Lhormer's testimony with respect to his relation to the houses connected to the private line stands uncontradicted. Not one of the consumers receiving water from this private line appeared at the hearing.

The evidence in this proceeding indicates that Lhormer does not distribute or transmit, nor has he ever undertaken to distribute or transmit water to the public. Furthermore, he receives no compensation within the meaning of the Public Utility Law. In view thereof, we are of the opinion and find that Arch Lhormer is not a public utility as defined by the Public Utility Law.

The testimony of S. J. Bargh, president of the Monongahela Valley Water Company, establishes that the records of the company indicate that Arch Lhormer applied for service early in 1942 after a shut-off order had been

executed against Charles Casperson for nonpayment of bills; that service is being rendered to Lhormer at the point where the meter is located; that bills are sent to Lhormer, who pays them at the effective schedule of rates of the company; that the company has never recognized or treated any of the occupants of the houses on Large Heights as its customers; that the company has no facilities beyond the metering point of delivery of water to Arch Lhormer and does not perform any maintenance work on facilities beyond that point; and that the company does not distribute water for compensation in Large Heights.

Bargh stated that he had personally surveyed the Large Heights area, and his testimony in this respect developed the following facts: There are thirty-seven houses located in the Large Heights plan of lots, a number of which are connected to a private one-inch line. It is physically impossible for the company to supply water to all of the elevations on Large Heights with its existing facilities. The maximum pressure is 130 pounds at an elevation of 1,000 feet which, converted into feet of head, is approximately 300 feet of head. However, the pressure goes as low as 60 pounds at this elevation, depending on the consumption of the Large distillery. The high point in elevation in this area on which a house is located is 1,280 feet which means that water must be pumped 280 feet in elevation if it is to reach that high point.

The estimated cost of facilities required adequately to serve all the existing houses in the Large Heights area is $44,476.47. This figure includes 8,692 feet of 6-inch water main and a booster pumping station. This estimate was computed by using present prices for materials and installation costs based on the average cost of the last three jobs which the company has completed. The estimated annual operating revenue is $496.80 and the income available for return is $164.46 resulting in a rate of return equivalent to .37 of one per cent.

[3] We must decide whether the Monongahela Valley Water Company should be expected to extend its service to the Large Heights area. A public utility should not be subjected to unreasonable expenditures resulting from the premature development of scattered sections of a community in advance of its normal growth where there is no rational expectation of the event justifying the expenditure. Sherman v. Public Service Commission, 90 Pa Super Ct 523, PUR1927D 11. The uncontradicted evidence makes it clear that the cost to the water company of furnishing water service to the thirty-seven houses in the Large Heights area would be prohibitive. Consequently, we find that it is not now economically justifiable or reasonable to require the Monongahela Valley Water Company to extend its facilities and service to the Large Heights area at its sole cost and expense; therefore, having duly considered all the matters and things involved herein,

It is *ordered*:

(1) That the inquiry and investigation at I. D. No. 12 instituted upon Commission motion to determine whether Arch Lhormer should apply for a certificate of public convenience

as a public utility rendering water service be and is hereby terminated and the record marked closed.

(2) That the inquiry and investigation at I. D. No. 13 instituted upon Commission motion into the water service and facilities of Monongahela Valley Water Company be and is hereby terminated and the record marked closed.

LOUISIANA PUBLIC SERVICE COMMISSION

Allen A. Phillips

v.

W. T. Miller

No. 5117, Order No. 5094
May 20, 1949

COMPLAINT *by motor carrier against unauthorized motor carrier service; dismissed.*

Motor carriers, § 11 — Commission regulation — Exemption of school bus — Effect of compensation.

1. The fact that a motor carrier makes a charge for his service does not of itself remove his service from an exemption from Commission regulation granted to motor carriers of school children and teachers, p. 122.

Motor carriers, § 11 — Commission regulation — Exemption of school busses — Definition of school children.

2. The term "school children" in a state statute exempting motor carriers of school children and teachers from Commission regulation is a generic label for a class or condition of persons and includes college students regardless of age, p. 122.

By the COMMISSION: This proceeding deals with the complaint filed by Allen A. Phillips against W. T. Miller to the effect that the said W. T. Miller is providing a bus service for compensation in the transportation of students of the Louisiana Polytechnic at Ruston over certain routes between their homes and that institution.

The complaint does not allege that any passengers are carried other than students and teachers of the college; and the complaint is predicated upon the contention that the transportation of such students and teachers for compensation falls within the purview of Act 301 of 1938 and is not exempted by the provision carried in § 3 thereof, which stipulates that "Nothing in this act shall apply to persons engaged in operating or to motor vehicles operated solely in transporting school children and teachers to or from schools." The complainant alleges

that this exemption does not apply to students of college level.

The matter was heard by the Commission on March 29, 1949, since which both parties filed briefs and the matter came up for final disposition at a business meeting of the Commission held in Baton Rouge on May 13, 1949.

[1] The complainant points out that the respondent, Miller, makes a charge for the transportation which he renders, and contends that this fact places Miller outside the scope of the exemption. The exemption, he avers, covers only those vehicles which transport school children or teachers gratis, the operating expenses of the vehicle being borne by the school board or other public authority.

But the act in its entirety covers only for hire transportation; that is to say, transportation in which the carrier receives a consideration for his service from the shippers or passengers, as the case may be.

Thus, if the teachers and students receiving the benefit of the service pay nothing, the operation would not come under the act irrespective of the exemption. Had it been the legislative intent to exempt only those vehicles which made no charge, that objective would have automatically been attained by the gratuitous nature of the service and there would have been no occasion to include the school bus exemption in § 3 at all.

However, the Commission must assume that the legislature had a purpose in including the exemption clause for school busses in § 3, and that this provision is not vain or superfluous. The conclusion is, then, that the legislative intent was to exempt such transportation even where a fare or consideration is imposed; and the Commission so finds.

[2] We come now to the question of whether the term "school children" would include students of college level. (Oddly, and somewhat inconsistently, we think, the complainant does not contend that the term "teachers" excludes college professors and instructors.)

The meaning of the term "school" as a place of instruction is not seriously questioned here; the controversy is as to the term "child," and specifically, whether the word "child" as used in the act is limited to persons of certain ages or degrees of maturity. English usage in history, law, literature, and Sacred Scripture is replete with examples in which the term "child" or "children" is by no means confined to the immature.

The Merriam-Webster Dictionary, dealing with the word "child" as used in law, defines it as "legitimate offspring, or any direct descendant, as a grandchild, as the intention may appear." In another sense it defines a child as "one who by character or practice shows signs of relationship to, or of the influence of, another, as the disciple of a teacher; one closely connected with the place, occupation, character, etc., as a child of God, children of toil, etc."

The terms "children," therefore, may be taken as a generic label for a class or condition of persons. The Commission does not doubt that the exemption written into the act was meant to relieve the carriers of students to and from schools from the burden of regulation, and thus enable them to charge lower fares for the

benefit of its passengers, who are not, generally speaking, economically self-sufficient. We see no warrant for depriving college students of the benefit of the apparent legislative intent.

The Commission therefore finds that respondent's operation as described herein is within the scope of the exemption above-mentioned, and consequently does not fall within the purview of the State Motor Carrier Regulatory Act, No. 301 of 1938, as amended; and it is accordingly

Ordered, that the complaint herein be and it is hereby rejected and this proceeding dismissed.

NEW YORK PUBLIC SERVICE COMMISSION

Re Consolidated Edison Company of New York, Incorporated

Case 13423
March 24, 1949

MOTIONS *and petitions against interim increase in gas rates; denied.*

Discrimination, § 109 — Rates below cost of production — Gas.

1. Reversion to gas rates which would result in furnishing gas to certain customers at less than the cost of production would mean preferential treatment of such consumers and would mean that if the company were to earn a fair return, the deficiency by which such consumers were favored would have to be made up by other customers, p. 124.

Rates, § 158 — Reasonableness — Effect of past charges — Costs.

2. The Commission has no authority to fix gas rates insufficient to meet the cost of production in the case of certain customers, whether or not the company in charging such rates in prior years chose to supply service at less than cost, p. 124.

Rates, § 144 — Cost of service — Company position as to other departments.

3. The Commission cannot direct a company operating gas and electric departments to supply gas service at less than cost, even though it may sympathize with consumers feeling the sudden impact of higher gas rates after a long period of no increase, and even though the company accepts a gas rate increase and contests a decrease in electric rates, p. 125.

By the COMMISSION: The Commission has received numerous protests, by verbal and written statements, by letters, and by petitions, against the interim increased gas rates now charged by Consolidated Edison Company of New York, Inc.

The interim gas rate increase which went into effect on January 10th is estimated to result in an annual gas

revenue increase of about $11,000,000, and is the first major revision resulting in an increase in charges for gas since 1922. Increased charges were not uniform for all customers, but varied widely for different degrees of consumption, being greatest for larger consumption blocks having rates lower than present gas production costs. At the same time the Commission ordered a reduction in electric revenues, estimated at over $21,000,000 annually, to be accomplished by a 10 per cent reduction in bills other than for fuel surcharges. [See (1949) 78 PUR NS 221.]

The company contested the electric reduction. The Commission's views with respect to the company's position have already been expressed, and further amplification is not necessary. The electric reduction ordered by the Commission is no longer being applied to bills rendered by the company because of court action. The court, however, has required the company to post a bond to insure that refunds be made to consumers if the lower rates ordered by the Commission are sustained.

The company did not contest but accepted the interim gas increase. Further hearing in the gas proceeding was requested by the city of New York and other parties, but at the first of such hearings held on March 22nd the city of New York had no evidence to introduce.

At the hearing, a motion was made on behalf of the city of New York, joined in by other parties present, that the Commission set aside the present gas rates and immediately order as interim rates the rates previously in effect. Petitions had heretofore been filed by certain civic organizations and by the city of New York urging essentially that the company be required to make an undertaking, by one means or another, to insure repayment to customers of any difference between present interim rates and any lesser rates that might later be directed.

There are now available reported results for 1948 operations, indicating a loss of almost $4,800,000 in the gas department of the company, but a greater electric income and a greater over-all net income than reported by the company for the year 1947. The reported 1948 results further substantiate the conclusions reached from the earlier evidence, that electric revenues should be reduced, but that an increase in gas revenues is warranted. Further, the reported cost of producing gas (apart from transmission, distribution, other operating expenses, taxes, and return) is greater than the prior block rates for large consumptions by space-heating and commercial users.

[1, 2] Under such circumstances, reversion to the prior rates would mean the furnishing of gas to certain customers at less than the cost of production. It would mean preferential treatment of such consumers. It would mean that if the company is to earn a fair return the deficiency by which such consumers were favored would have to be made up by other consumers. Whether or not the company, in charging such rates in prior years, chose to supply gas service at less than cost, the Commission has no authority to direct the furnishing of gas service under such rates either under the statute cited by the city of

New York or under any law of the state or the nation.

There is no doubt but that the greater cost of living, higher charges for practically all commodities and essentials, has been a shock and a hardship upon many individuals, some of whom are deserving of every possible consideration. Many other price increases were piled one above another, as, for example, with other types of fuel where price changes made from time to time have aggregated more proportionately than the recent gas rate increase, the first in over twenty-six years in instance of this company. Now gas consumers, faced with the first gas rate increase which still is lower proportionately than increases experienced over the years by coal or oil users, feel the effect more keenly because the gas rate change did not come gradually.

[3] However one may sympathize with consumers feeling the sudden impact of higher gas rates after a long period of no increase, and however reprehensible the anomalous position taken by the company as to gas and electric rates may be, nevertheless this Commission cannot direct the company to supply gas service at less than cost. If the Commission attempted to do so, it undoubtedly would be enjoined by the courts and no useful purpose would be served.

The motions made at the hearing and the petitions filed heretofore with this Commission are denied. The present interim gas rates are not final rates, the gas rate hearings will continue, and such adjustment will be made to the present interim gas rates as may prove proper to conform to changing conditions and as additional testimony and evidence develop.

NEW YORK PUBLIC SERVICE COMMISSION

Re Madison Avenue Coach Company, Incorporated et al.

Cases 13905–13909
June 2, 1949

PROCEEDING *on Commission motion as to proposed increases in transit rates; interim rate increase allowed.*

Return, § 16 — Fair return on investment.

1. The Commission, although unable to fix rates for the future on the basis of past operating costs, has an obligation to insure a utility a fair return on its invested capital, p. 127.

Expenses, § 6 — Powers of Commission — Employees' wages — Consideration in rate hearing.

2. The Commission has no jurisdiction over wages paid by a utility to its

employees, but in considering operating costs for rate making, all wage claims actually and currently in existence must be considered, p. 127.

Rates, § 504 — Transit company — Basis for rate increase.

3. A number of transit companies operating within the city of New York were allowed an interim increase from a 7-cent to an 8-cent fare where it appeared that such increases were necessary to assist the companies in putting their operations on a paying basis, in meeting wage increases, and paying for newly purchased equipment, p. 128.

Rates, § 130 — Service considerations.

Statement that the Commission will not be sympathetic in determining final rates if transit companies do not afford the public the service to which it is entitled, p. 128.

APPEARANCES: Sherman C. Ward, Acting Counsel (by John T. Ryan, Frank C. Bowers, Philip Hodes, and Raymond J. McVeigh, Assistant Counsel) for the Public Service Commission; John P. McGrath, Corporation Counsel (by Andrew Bellanca, William A. Marks, John Suglia, and G. Gary Sousa, Assistant Corporation Counsels), New York, for the city of New York; Shearman and Sterling and Wright (by Thomas F. Fennell, Eric Hager, Paul Russell), New York 5, for Madison Avenue Coach Company, Inc., New York City Omnibus Corporation, Eighth Avenue Coach Corporation, Fifth Avenue Coach Company; Gordon, Brady, Caffrey & Keller (by M. S. Gordon, Addison B. Scoville, David C. Keane, Jr.), New York city, General Counsel, for Surface Transportation Corporation of New York and Third Avenue Transit Corporation; Samuel Schachter, New York city, for United Real Estate Owners Association and Taxpayers Union of city of New York; Hyman Bravin, New York city, for the Civic League of North Bronx, and the Burke Avenue Subway Extension Committee.

By the COMMISSION: Since application was originally made to this Commission in August of 1948 for the determination of proper bus fares on the privately owned bus companies in the city of New York, the situation has been under continual review and at the present time the staff of the Commission is engaged in review of the companies' data for the preparation of evidence to be submitted in the fixing of permanent rates. Interim rates, first of 6 cents and later of 7 cents for most of the bus companies operating in New York city were established. The Fifth Avenue Coach Company received an interim increase of one cent making its fare 11 cents.

The present interim fares expire on June 30, 1949, and unless further action is taken, the fares will revert to the original 5 cents. Inasmuch as our investigation is not concluded, it becomes necessary to consider what if any change should be made in the present interim fare structure.

A review of our previous estimates as to the amounts to be derived from the higher fares shows that the increases which were granted did not produce the increase in revenue which

was anticipated. The particular cause of the lower revenue was a much larger loss in riding than had been estimated.

In the first quarter of 1949 for example, the loss of Surface Transportation Company in passengers carried as compared to the first quarter of 1948 was about 14,500,000 passengers, or a decrease of 15 per cent. In the New York City Omnibus System in general the loss in riding has exceeded 10 per cent. The results are similar to that experienced on the New York subway system.

In examining the operating results for the first quarter of 1949, as shown by the companies' verified reports, we find the following results: Surface Transportation Company $448,454.78 loss; New York City Omnibus System (New York City Omnibus Corporation, Eighth Avenue Coach Corporation and Madison Avenue Coach Company, Inc.) show a total operating income of $160,824.22. Fifth Avenue Coach Company shows a loss of $21,071.19. The figures given above represent operating income and do not include the payment of any interest on debt or income taxes. In further reviewing the figures we find, with the exception of Surface, each of the companies showed an improvement in its position for the month of March due to added riding during the taxi strike and in general April has been a poorer month than March.

On the basis of earnings either for the quarter or the first four months of the year, Surface Transportation and Fifth Avenue Coach show losses and the combined figures of the New York City Omnibus System show far less than the return permitted by law.

We have fully reviewed in our previous opinions the history of the wage negotiations which led to the present increase in fares. It must be remembered that as part of that agreement certain retroactive pay was due the employees. In many cases they have not as yet received in full pay which was due them. In addition to the amount which was clearly due certain payments were in dispute. The matter under the auspices of the mayor of the city of New York was submitted to Edwin Weinfeld as arbitrator. A complete review of his decision rendered May 30, 1949, does not appear necessary at this time. The result, however, is to award additional retroactive pay to the employees of the companies covered in this proceeding.

[1, 2] While under the law we cannot fix rates for the future on the basis of operating costs of the past, we do have an obligation to see to it that a company earns a fair return on its invested capital. Unless a company is permitted to earn such a return, it never would be in a position to have the moneys to meet its maturing obligations, whether those be for labor as in the present case or for necessary materials and supplies. Unless we presently grant relief to the companies involved, we bring about a situation where the arbitrator's decision is useless so far as the men's obtaining their pay. We have no jurisdiction over the rates of pay. However, in considering the operating costs of the companies involved here, we must take into consideration whatever wage claims actually and currently exist. If the men are to be paid promptly, we must act promptly.

[3] In the case of Surface Transportation Corporation, it is obvious that the company cannot continue long in operation losing at the rate of substantially $2,000,000 per year. We appreciate that there are those who use its facilities who feel that the present fare is more than the transportation it affords is worth. As a result of recent proceedings before this Commission, additional busses have been ordered. It is obvious from the present position of Surface that losing money as it has, it will not be able to pay for the necessary equipment to provide the service that is required.

The city of New York is entitled to a high standard of bus service and we wish to clearly indicate that in the determination of final rates, the Commission will not be sympathetic with companies which do not afford the people of this city the service to which they are entitled.

We have two problems which are unique in the city of New York. One is that there never has been a system of tickets or tokens. This makes increases in fares in multiples of one cent necessary in any interim increase. The second is that the companies involved run on parallel streets, that the people of the city of New York have been accustomed to pay the same fare irrespective of the bus line on which they travel with certain exceptions such as the Fifth Avenue Coach. To have a higher rate of fare on one street and a lower rate of fare on another on the next block would unquestionably make for confusion, disorganize the riding habits of the public and divert traffic from one company to another. It seems therefore necessary that all of the companies should be similarly treated. The Commission feels that an increase of one cent to each of the companies involved herein under present wage rates and with the present number of riders will provide the companies during the interim period prescribed herein with adequate revenue to give proper service and to give a return on the companies' invested capital.

Accordingly, if the companies involved in this proceeding shall file with the Commission a tariff providing for an 8-cent fare instead of 7 cents with all of the other terms and conditions of the tariff remaining unchanged, the Commission will consider adopting an order permitting such fares to become effective on one day's notice.

As to the companies not embraced in this proceeding, the Commission has reached no determination as to what action should be taken in respect to interim fares after June 30th.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

Westinghouse to Build Power Giants for Duquesne Power Co.

FOUR large 3,600-rpm steam-turbine generators to be built by the Westinghouse Electric Corporation will be added shortly to the lines of the Duquesne Light Company near Pittsburgh, Pennsylvania. These will be an important part of a 112-million-dollar expansion program of that company currently in progress.

The four new generators will boost Duquesne Light Company's total capacity to 992,700 kilowatts to meet the company's ever-growing demands in the Pittsburgh area.

IBM Issues Literature on New Products

COINCIDENT with the announcement of several new products, International Business Machines Corporation has released literature describing these new machines.

Available on request are folders and booklets covering IBM Cardatype (Bulletin No. 52-5727-0); IBM Accounting Machine with Wheel Printing (No. 52-5721-1); Card Programmed Electronic Calculator (No. 52-5731-0); Electronic Statistical Machine (No. 52-5726-1); Card Punch (No. 52-5719-1); Electronic Collator (No. 52-5730-1); and Consecutive Spacing Time Recorder (No. 53-5717-1).

Literature is also available on the new IBM Executive Typewriter (No. 55-5582-0); the improved Accounting Machine that prints three lines from one card (No. 52-5303-3); and a general booklet on the IBM Service Bureau (No. 52-5722-0).

Copies of any of the above booklets may be obtained from the International Business Machines Corporation, 590 Madison avenue, New York 22, New York.

U. S. Rubber Names Four Divisional Managers

FOUR divisional managers have been appointed by the electrical wire and cable department, United States Rubber Company, to supervise sales of electrical wire and cable throughout the country.

The appointments were announced recently by Howard H. Weber, newly appointed general sales manager for the department.

Clarence H. Le Vee has been named eastern division sales manager with headquarters in New York City. He will supervise sales in Boston, New York, Buffalo, Syracuse, Philadelphia, Baltimore, Atlanta, and Pittsburgh branches.

J. A. Leuver has been appointed western division sales manager with headquarters in Chicago. He will supervise sales in Cleveland, Detroit, Chicago, Cincinnati, Indianapolis, Milwaukee, Minneapolis, and Omaha branches.

Don B. Karlskind has been named southwestern division sales manager with headquarters in Dallas, Texas. He will be in charge of branch sales in Birmingham, New Orleans, Houston, Dallas, Kansas City, Tulsa, St. Louis, and Denver.

L. M. Guibara has been appointed Pacific coast division sales manager with headquarters in Los Angeles. He will be in charge of branch sales in Los Angeles, San Francisco, Portland, Seattle, and Salt Lake City.

Locke Issues Bulletin on Suspension Type Insulators

PUBLICATION of the sixth in a series of engineering data bulletins has just been made by Locke Incorporated, Baltimore, Maryland. This latest bulletin covers the selection of suspension type insulators for transmission and

distribution line construction, and is a continu tion of Bulletin No. 5 which covered the app cation of pin type insulators for the sa purposes.

Copies may be had by writing Locke Inc porated, P. O. Box 57, Baltimore 3, Maryla

Trumbull Develops New Safety Switch

AN all-new Type A Safety Switch, the H (High Capacity Interrupter) has been leased to the market, according to an announc ment by The Trumbull Electric Manufactur Company.

Designed for use in modern high capac industrial distribution systems, the HCI Swi has an entirely new arc-quenching design a actuating mechanism, both of which give ability to break unusually heavy loads quic and safely. When properly fused, the HCI a has the unusual ability to withstand heavy sh circuits without damage.

Other features of the new switch are signed to save space, prevent trouble and a years of life.

HCI Switches are manufactured in 30- and 100-ampere sizes and are Underwriters' proved throughout. Semi dust-tight enclosu are available. Additional information may obtained by writing to the Merchandising D partment, The Trumbull Electric Manufactu ing Company, Plainville, Connecticut, for free copy of Bulletin TEC-10.

Issues New Bulletin on Feed Water Regulation

BULLETIN S-27, 20 pages, has been issued The Swartwout Company, 18511 Euc avenue, Cleveland 12, Ohio, describing new In pulse feed water regulation systems and relat equipment. Fully illustrated and described a systems designed for higher pressure fa steaming boilers which tend to make feed wat control complex by the false level indicatio produced by "shrink" and "swell."

Friden Introduces New Fully Automatic Calculator

A NEW, fully automatic calculator, a pro uct of six years of intensive research a engineering, is being presented by the Frid Calculating Machine Co., Inc., San Leandr Calif., to the world's office equipment marke

Possessing a score of new "ultra-matic" fe tures, which have been likened to the acceptan and importance of the automatic shift in aut mobiles, the attractive, streamlined, colo engineered new Friden is accredited with elim nating operator effort and fatigue. It offe complete fully automatic multiplication, div sion, addition and subtraction, so that, as Friden executive asserts, with this new Frid ST-W, "the calculator, not the operator, do the work."

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work problems are handled, from elementary to the most complicated, with simplicity and ease. Excelling not only as a time and labor saver, the new Friden offers remarkable capacity for sustained accurate, high-speed figure-work production.

Competitively priced, the new automatic Friden utilizes new operational features and methods that now set new low-cost standards of figure production. Stressing answer production and operational comfort, this "ultramatic" permits the operator to write the answer to one problem while the next one is being automatically computed.

In presenting the new calculator, the Friden Calculating Machine Co., Inc., with a sales and service representation in over 250 company controlled domestic offices and 88 foreign distributors, rounds out its fifteenth year in calculator production. The original Friden calculator was invented by the late Carl Friden, inventive genius and founder of the company.

General Electric Announces New Switching Locomotive Bulletin

A NEW, 16-page bulletin, describing the 80-ton diesel-electric locomotive for industrial switching has just been announced by General Electric.

The bulletin describes the locomotive completely and shows why it is economical to operate. Fully illustrated, the bulletin points out salient features of the unit.

The publication is available to readers of this magazine by writing Apparatus Dept., General Electric Co., Schenectady 5, N. Y. and asking for Bulletin GEA-3810A, "80-Ton Diesel-electric for Industrial Switching."

75-Ton Boiler Drum Hoisted 10 Stories Above Street Level

A BOILER drum 44 feet long and weighing 75 tons was lifted into place recently, ten stories above street level in the new $13,000,000 extension of the 59th street power plant now under construction for the New York City Transit System. The drum is part of a Radiant boiler, built by The Babcock & Wilcox Company, which, when in operation, will have a steam generating capacity equivalent to more than 30 of the old boilers in operation since the IRT subway was opened in 1904. The drum is five and one-half feet in diameter, built of steel plate four and and one-eighth inches thick.

Cochrane Appointment

COCHRANE Corporation, Philadelphia, Pennsylvania, announce the appointment of Samuel B. Applebaum as manager of their Cold Process Water Treating Division. He is also vice president of the Liquid Conditioning Corporation, an operating subsidiary of Cochrane. Mr. Applebaum was formerly vice president of the Permutit Company and later president of Liquid Conditioning Corporation.

Cleveland Trencher Introduces Baby Digger Model "92"

ENGINEERED to fit the new, present-day needs of contractors, utilities, and municipalities, a new, small, compact model of the famous Cleveland "Baby Digger" trenching machine has been placed on the market by The Cleveland Trencher Company. Known as the Baby Digger Model "92," the new Cleveland is especially adapted for gas, water, and sewer house services, for telephone and power cable and conduits, for house and building footings, and for airport, highway and farm drainage and irrigation.

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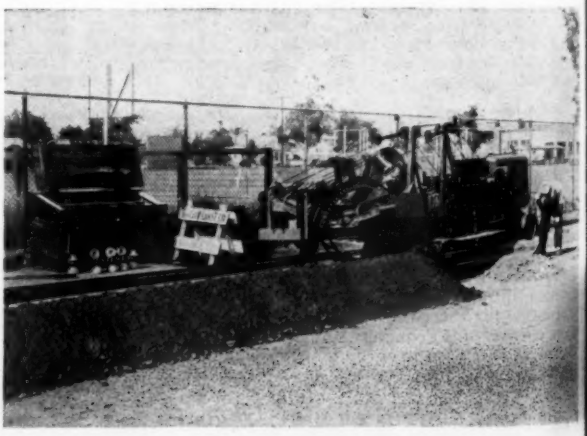
For a folder giving full details, write to The Cleveland Trencher Company, 20100 St. Clair avenue, Cleveland 17, Ohio.



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